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Current Topics.

The late Sir Arthur Channell.

THE LAW has lost one of its grand old men by the passing away last week of Sir ARTHUR CHANNELL, who had almost attained the patriarchal age of ninety. The son of a great lawyer—Baron Channell, who sat on the bench from 1857 till 1873—the late Sir ARTHUR inherited his father's love of law and its administration, and in due time proved himself a worthy judicial successor of his distinguished sire. At the bar he had a large practice, chiefly in local government matters, which he knew intimately, but his knowledge of other branches of law became apparent when he was appointed a judge. In the Commercial Court, in particular, he displayed a mastery of all branches of mercantile law which came as a surprise to those who had seen him only in public health cases; and he delivered a number of notable and luminous judgments dealing with the position of mercantile agents. Differing in this from some of his colleagues, he never sought the applause of the public; he was content to discharge the varied duties that fell to him quietly and unostentatiously, and this he did to the entire satisfaction of the profession. Of him it could truly be said that he knew his business and so brought to its performance that wide and exact knowledge which is so essential a qualification of a sound judge. In the Divisional Court, especially when dealing with the varied classes of work allotted to the Crown Paper, he was a tower of strength. So great, indeed, was he in this sphere that it was to many a matter of keen regret that he was never promoted to the Court of Appeal, to which undoubtedly he would have brought an added strength. Although he resigned as long ago as 1914 he was not content placidly to draw the pension to which his judicial services entitled him and do nothing. Almost immediately after his retirement he acted as foreman of the Grand Jury at the Somersetshire Assizes, and after performing that important but for him comparatively humble duty, he began to give assistance in the appellate work of the Privy Council, delivering judgment in a series of prize cases which arose out of the war. Again, in 1921, when the business of the King's Bench Division was falling into arrear, Sir ARTHUR responded with alacrity to the call for help and returned to the bench accompanied by his old and faithful clerk. Here, again, he showed that, despite his weight of years, his mental eye was not dim nor his natural force abated, for he disposed of the various cases that came before him with his old ability and expedition. To the very end he continued a hard worker, and well maintained the tradition of public service which we have come to associate with our judges and ex-judges. His long career was marked by a constant willingness to spend and be spent in the service of the State. All honour to his memory!

Legal Education.

IN HIS Presidential address to the Provincial Meeting of The Law Society at Eastbourne Mr. R. M. WELSFORD touched on two important but widely different subjects. One can imagine, much less see, little connexion between "Holding Companies" and "Legal Education." There are few solicitors better qualified to make observations upon legal education than Mr. WELSFORD, who for so many years has occupied the arduous and responsible task of presiding over the Education Committee of The Law Society. To all who take an interest in legal education the address of the President of The Law Society stands out as a distinct landmark in the history of the subject. It constitutes a signal to advance by an experienced leader. In the first place it emphasises the need for liberalising the education of the rising generation of solicitors. "The ordinary student," said the President, "reads practically nothing outside the subjects in which he is examined. Those subjects are purely legal. In my view the range of subjects should be extended so as to increase his working capital as a lawyer. As part of that extension I would include some acquaintance with legal and commercial French and German. I would require a much higher standard of general knowledge, and especially of history. TREVELYAN'S 'History of England' and the 'Book of English Law' by Professor JENKS should be standard works, and I would make a paper on these a feature of the final examination." One is tempted to observe that no steps can be taken to liberalise the solicitor's education without first taking bold steps to liberalise the present examinational tests for admission.

Another timely plea put in by Mr. WELSFORD is for the bridging of the gulf between the theory and the practice of the law. This is exactly what has been done in a good many instances in the United States. The day is not yet in England, however, when a professor of law can expect to sit on the judge's bench. But there are no inherent difficulties in

England, just as there have proved to be none in America, in the way of such a procedure being followed. May "the reconciliation of learning and professional technique" continue.

The most important of the President's observations relate to the organisation of legal education centres in London. It strikes a foreigner most forcibly to find that the forces of legal education in London are so dissipated. Mr. WELSFORD thinks that as long as the admission to the profession rests on the passing of examinations "Amalgamation with the University of London is impossible." Therefore, in his opinion, the first aim should be the formation of a "Professional Law School in London." Even a professional law school might prove a step towards the right goal, but given goodwill all round, a little less regard for vested interests and genuine sympathy with the cause of education, there would be no real difficulty to the establishment in London of one school of law worthy of the greatest city in the world and of the capital of our Empire.

Holding Companies.

IN HIS address Mr. WELSFORD did another good service by directing attention to the subject of holding companies and the problems which emerge out of their relation to what are known as subsidiary companies—companies which are practically absorbed by the holding companies, but which nevertheless continue in existence as legal entities. Every student of English company law is aware that we have travelled a long way since the idea of creating corporations with limited liability took root and fructified to an extent little dreamt of by those who originated it, and certainly they never contemplated some of its later developments, including that which formed the subject of Mr. WELSFORD's illuminating address. Till comparatively lately, the advantages and countervailing disadvantages of amalgamations and absorptions, variously described as trusts, combines, parent and holding companies, have been considered chiefly from the economic and political points of view, but, as Mr. WELSFORD so clearly points out, the legal questions involved are serious and deserving of the most careful thought. What, for example, is to be the relation of the holding company to its subsidiaries when no true and complete amalgamation is effected? This is the question which Mr. WELSFORD mainly discusses. Of the different possible solutions the most convenient is for the holding company itself to be appointed director and manager of each subsidiary, for in this way the directors have before them all the information necessary to form an opinion whether any particular inter-company transaction is justifiable in the interests of the subsidiary company. By this method the possibility of conflict between the shareholders of the different companies, although not entirely eliminated, is reduced to a minimum. The address, which is printed in full in our present issue, is deserving of careful study by all interested in company law, and particularly by those who may be called upon to advise how amalgamations should be effected.

A Controversial Book.

IF THE authoress and the original publishers desired a simple answer to the question whether the novel "The Wells of Loneliness" could lawfully be published and sold in England, the comment must be made that they have taken the least convenient and most expensive way of obtaining it. The book in fact is said to deal with the problem of "homosexuality." The existence of this tendency in a small percentage of otherwise ordinary people (3 per cent. is the estimate of an American medical specialist) and a much larger proportion of adolescents, amongst whom it normally disappears on maturity, is absolutely undeniable. Miss RADCLYFFE HALL, the authoress in question, deals with this aberration as manifested in a woman, and, it may be gathered, seeks to enlist the sympathy of the reader for the hard fate of her heroine, doomed by the strictest force of public opinion to repress her instincts. It may perhaps be conceded that the 97 per cent. of normal persons have no cause to envy the small minority whose tendencies if indulged and discovered condemn them to rigid social ostracism, and, in the case of males, highly penal laws. Miss HALL's book was read by the publishers, and the fact that they published it seems to be conclusive evidence that, at the time, they did not deem it obscene or indecent within the common law forbidding such publications. Several literary critics of newspapers, being of the same opinion, commended the book. There was, however, a strong protest in a Sunday paper, and the alarmed publishers, whether with Miss HALL's consent or otherwise does not appear, took the curious course of asking the Home Secretary what he thought about it. The Home Secretary, as much entitled to his private opinion as any other person, thought the book ought to be withdrawn, and said so. The publishers, having invoked his opinion, bowed to it and withdrew the book. Not unnaturally, a large demand for it was at once manifest. The authoress appears to have made an arrangement with publishers in Paris, who sent the book to England for publication. It has now been seized by Customs officers, and the reason given is that it is "indecent or obscene" within the prohibition contained in s. 42 of the Customs Consolidation Act, 1876. The legal problem is thus complicated tenfold. The question whether the book is an indecent one within the law could have been most simply raised either by direct challenge to the police or any private objector to prosecute for the common law misdemeanour of publishing obscene matter, or by inviting seizure under the Obscene Publications Act, 1857, and showing cause against seizure. The simple issue would then be, in the language of COCKBURN, C.J., in *R.* v. *Hickling*, 1868, L.R. 3 Q.B. 360 at p. 371, "whether the tendency of the matter was to deprave and corrupt those whose minds are open to such immoral influences"—approved *Steele* v. *Brannan*, 1872, L.R. 7 C.P. 261, and, presumably, would be one for a jury, see *R.* v. *Key*, 1908, 1 Cr. Ap. 135. The procedure invoked would then have been straightforward. In *R.* v. *Hickling* and *Steele* v. *Brannan* it was held that sincerity of motive (in those cases violent anti-Catholicism) did not excuse the offence.

The Customs Commissioners as Censors.

THE PRESENT position, instead of being simple, appears to involve a novel and difficult legal problem, namely, the remedy of the importer who alleges that his goods have been wrongfully seized by Custom House officers as within the prohibition contained in s. 42 of the Consolidation Act Here the issue is whether the book is "indecent or obscene," and the test would be the same as that in *R.* v. *Hickling* quoted above. The question of procedure remains. There are a number of old cases in the books to the effect that an action of trover would lie against a Customs officer for wrongful seizure of goods, see, for example *Tinkler* v. *Poole*, 1770, 5 Burr, 2657, and trespass lay if the goods were returned in a deteriorated condition, as in *Laugher* v. *Brefitt*, 1822, 5 B. & Ald. 762. These, however, were cases where the seizure itself was unlawful, but Customs officers have the right to possess and inspect all uncustomed goods arriving from a foreign country, and to retain them for a reasonable time, see *Jacobsohn* v. *Blake*, 1844, 6 Man. & G. 919. There is authority that mandamus will not lie against the Commissioners of Customs, see *R.* v. *Commissioners*, 1836, 5 A. & E. 380, and, according to Mr. ROBERTSON ("Civil Proceedings," etc., p. 68) they cannot be sued. The Consolidation Act provides machinery of appeal from officers to Commissioners (ss. 32-38), but, if that is the only remedy, the ultimate censorship of the latter would appear to be as arbitrary as that of the Censor of Plays. Sections 264-267 appear to relate to informations for forfeiture. Possibly, apart from the Act, an ordinary action for detinue would lie against the officers seizing or detaining the books, and then the issue could

be raised on the defence that they were indecent and obscene within s. 42 of the Consolidation Act. The concluding sentence in s. 34 appears to support this view. It may be added that if homo-sexuality is to be taboo in print (and the whole country was flooded with details of it in the Press on the prosecution of a well-known author and playwright within living memory) the veto should neither be pronounced by the Commissioners of Customs nor Sir WILLIAM JOYNSON-HICKS, estimable as they or he may be, but by a court of justice interpreting and enforcing the law of England.

Exhibits.

IN THE conduct of complicated cases the skilled advocate is never above paying attention to small details. Who has not seen a whole court confused, almost to the point of misunderstanding the issue, through the mishandling of exhibits? The duty of seeing them properly numbered may devolve upon the clerk, but the advocate can help by checking the process as it goes on and by seeing that a zealous usher neither loses them nor hands the Bench the wrong one at an important stage of the case. One fruitful source of trouble is the habit of allotting a single number to a variety of articles. "On the prisoner were found the watch, two rings, latchkey and fountain pen produced." The whole parcel is labelled "Exhibit 1." Later on, one witness identifies the watch, another one ring, and a third the second ring. Each is referred to as "part of exhibit 1," and the two rings are soon the subject of much misunderstanding. If each article be separately marked, no confusion can arise; and even in these days of economy there is nothing praiseworthy in saving a few exhibit numbers.

Property Maintenance Claims.

THE INTERPRETATION of the term "maintenance" which is now being adopted by the Revenue Authorities in dealing with claims under r. 8 of No. V of Sched. A does not appear to be justified. If an item is included in these claims for the cost of maintenance of property which has the slightest resemblance of an improvement the officials immediately contest it. It frequently happens, however, that these improvements amount to nothing more than an attempt to maintain the existing rental which, by the way, has formed the basis of the Sched. A assessment. Alterations to properties frequently become necessary owing to a change in fashion or in the tastes of potential tenants. For instance, twenty years ago a property might readily have commanded a rental of, say, £200, even although it had no bathroom. Then there were plenty of good servants to be obtained and baths were taken in the bedrooms or in the dressing rooms. Ten years later it would have been impossible to obtain the same rental without a bathroom for the family, and, to-day, a tenant would not look at the place if it did not possess at least two, and probably more, such conveniences. In such a case, therefore, it becomes necessary to introduce these alterations, not as improvements, but as things vitally necessary to maintain the property in such a state as to command the rental on which it is assessed. Not only is it impossible to obtain so great a rental without these changes from time to time, but it frequently happens that the changes are necessary in order to secure a tenant at all. The same reasoning, of course, applies to the conversion of stabling into a garage, or to the erection of a garage, but the Revenue Authorities invariably refuse to admit such items in claims for maintenance. The point should strenuously be contested and we would remind our readers that the decision in such matters is with the Commissioners and not with the officials.

The Rating of Woodlands.

THE EXPENSE of an appeal from the assessment committee to quarter sessions recently led to a consideration of the above matter at the Kidderminster county petty sessions by an alternative procedure. The rate collector applied for a distress warrant for £2 2s. 8d. in respect of a rate levied on the 1st May, 1928, upon Coleride Wood, the area being 67 acres 3 roods and 30 perches, described in the rating book as woodland and sporting. The defendant's case was that he was not rateable on the grounds that (1) he was not in occupation; (2) there were no woodlands on the land. The word "woodlands" included land used for the growth of saleable underwoods, and it was presumed that the rating authority sought to rate the property on that account, but the defendant had bought subject to an existing agreement whereby all timber, underwood and saleable undergrowth was reserved. The owners of the reserved rights, having been in possession of the wood, had cut the undergrowth, chiefly oak, but there were still a few old stumps around which small growths had appeared. It was contended that the growth from old stumps was not saleable undergrowth, and as the defendant had bought the land for mining purposes he had appealed to the assessment committee, but unsuccessfully. The agreement was only to permit access for certain purposes, and did not exclude the owner of the land, but it was argued that even if the owner had a right of entry it did not constitute him the occupier. The magistrates' clerk, being also clerk to the Kidderminster Rural District Council, under whom the land was rated, did not retire with the magistrates, and the chairman, Major ERIC KNIGHT, D.L., subsequently stated that the defendant was considered to be in beneficial occupation and liable for the rate. A distress warrant was therefore issued, and notice of appeal was given.

Status of Osteopaths.

THE INDETERMINATE status of osteopaths and the indefinite limitation of their professional activities were referred to at the annual congress of the Chartered Society of Massage and Medical Gymnastics, held at the British Medical Association House on the 4th inst. Reference was made to the practising of osteopathy in this country by incompetent and untrained people, and the suggestion was rightly advanced that a consideration of the legislative aspect of the matter was essential in the public interest. Osteopathic treatment has long been regarded by the medical profession with some degree of suspicion, and it is obvious that this distrust cannot be completely eradicated until some legalised standard of competency is required of practitioners; in the words of Dr. R. C. Elmslie (presiding) it was difficult to blame the medical profession if they did not take osteopathy seriously; if it wished to make progress it had to set its own house in order. Legislation to effect this purpose would be advantageous, not only for the protection of the public from quacks, but in securing to legally qualified osteopaths the recognition they deserve and to enable them to diagnose and advise in cases requiring their particular type of treatment. The question of their right to remuneration for such diagnosis and advice, as distinct from actual treatment, has been raised in court. In the cases of *Hall* v. *Trotter*, 1921, 38 T.L.R. 30, and *Macnaghten* v. *Douglas*, 71 SOL. J. 409; 1927, 2 K.B. 292, osteopathic treatment was given by persons holding an American osteopathic qualification, but no British medical degree, and not registered as medical practitioners. Both actions were brought to recover fees for work done, and in each case s. 32 of the Medical Act, 1858, was pleaded in defence. Section 32 enacts: "No person shall be entitled to recover any charge in any court of law for any medical or surgical advice, attendance, or for the performing of any operation, . . . unless he shall prove upon the trial that he is registered under this Act." In *Macnaghten* v. *Douglas*, following *Hall* v. *Trotter*, it was held that osteopathic treatment did not fall within the Act, and that something was recoverable for work done, but both Mr. Justice ACTON and Mr. Justice TALBOT refused to express an opinion whether the claim could be divided into two parts, (1) for treatment, (2) for advice. In the former case, *Hall* v. *Trotter*, it was held that no advice had been given, and the claim for treatment was allowed.

Agricultural Credits.

By W. H. AGGS, M.A., LL.M.

On the first day of October there came into operation the Agricultural Credits Act, 1928, introducing methods of rendering financial help to the farming community which are quite novel, at all events in this country, and from the point of view of the financial purist are open to criticism in that public funds are provided without adequate, or, indeed, any public control of the kind usually provided for.

The farming industry has been in a very depressed condition for several years and this has been felt all the more keenly, coming as it has after the boom years of the war period.

Farmers also, rightly or wrongly, attribute some of the difficulties they are under to Government action.

By that hasty and ill-thought-out piece of legislation, the Agriculture Act, 1920, a far-reaching and somewhat unfortunate effect was produced. Part I of that Act was an amendment of the previous Corn Production Acts of 1917 and 1918, and afforded the farmer the security of fixed prices for the wheat and oats which he grew. As a counterweight though, he was required to pay a minimum wage to his agricultural workers.

As might have been foreseen, this crude attempt to fix prices for the principal cereals threatened to involve the Exchequer in a very heavy outlay, and the Act of 1920, which was passed on the 23rd December, 1920, had only been in operation a few months when Part I, together with the earlier Corn Production Acts, was repealed by the Corn Production Acts (Repeal) Act, 1921, which received the Royal Assent on the 19th August, 1921.

The prompt destruction of their hopes of receiving at least a minimum fixed price for their produce was regarded by farmers as a distinct breach of faith on the part of the Government, more especially as the way the repeal was effected did not leave them free to the ordinary operation of the law of supply and demand as regards the labour they employed, but they still remained bound in regard to the payment of a minimum wage. This bitterness was only very partially removed by the payments made by virtue of s. 2 of the repealing Act in respect of the harvest of 1921. It stands, however, to the credit of the farming community that there has been no demand or indeed suggestion that agricultural labourers should ever again be paid the low wages that formerly prevailed, though undoubtedly opinions have been expressed that complete freedom of contract is the arrangement by which the wheels of the farming industry work most smoothly, and now that both farmers and agricultural workers have their respective unions, the position is better safeguarded. Part II of the Agriculture Act, 1920, introduced amendments to the Agricultural Holdings Act, 1908, which placed increased burdens upon the landlord, particularly in the matter of compensation for disturbance.

During the years from 1917 to 1921, owing to a variety of circumstances, such as heavy taxation, the increased burdens already mentioned and losses during the war, many landlords decided to sell their lands, and estates all over the country were broken up. The prices for agricultural land at that time ruled high and were enhanced by the boom farmers enjoyed during the war and the prospect of a continuance of such prices, which was fostered by the Corn Production Acts. This last reason also encouraged tenant farmers to purchase the holdings which they occupied, and in some cases the owners offered them the farms prior to the estate being put up to auction.

In this way a great many farmers became owner-occupiers and purchased their farms at high prices, only to find when values and prices speedily dropped that they had made a bad bargain, and began to find themselves seriously hampered in the way of finance, because finance, perhaps even more than in other industries, plays an important part in farming, and a certain amount of liquid capital is very necessary.

To assist those farmers who found their resources strained by having to pay heavy mortgage interest, and their capital locked up in the purchase of their holdings, the Agricultural Credits Act, 1923, was passed, while the same year the Agricultural Rates Act, 1923, still further extended the principle of the Agricultural Rates Act, 1896, and reduced the rates on agricultural land to one-quarter of the normal rate, and finally the Rating and Valuation (Apportionment) Act, 1928, paves the way for the complete exemption in the future of agricultural land and agricultural buildings from all liability for rates.

The Agricultural Credits Act, 1923, allowed the Public Works Loan Commissioners to lend to approved associations money which they required for making advances on what are termed in the Act "recognised mortgages."

This power of the Commissioners was temporary in character and limited to five years from the passing of the Act (31st July, 1923), and a mortgage to be a "recognised mortgage" had to be in respect of land wholly or mainly agricultural land which had been purchased by the borrower between the 5th April, 1917, and 27th June, 1921. The rate of interest on the mortgage also must not exceed a rate prescribed by the Treasury, but the amount of the mortgage could be up to 75 per cent. of the value of the land at the date the Commissioners made the advance or took the transfer.

The Act also directed the Minister of Agriculture and Fisheries to promote the formation or extension of agricultural credit societies.

It will be realised that the Act of 1923, whatever its effect has been, has by now spent its force, and it will also be seen that it almost exclusively dealt with the needs of the owner-occupier.

Though, as has been already stated, many tenants acquired their holdings, yet it still remains the fact that the system of landlord and tenant prevails over at least two-thirds of the agricultural land in this country.

With the hope and expectation of more permanently meeting the financial requirements of the agricultural community, both those who belong to the owner-occupier class, as well as tenant farmers, there has been passed the Agricultural Credits Act, 1928, which it is now intended shortly to explain and discuss.

The scheme of the Act is for a company limited by shares to be registered under the Companies Acts, 1908 to 1917. The company has not yet been floated, and it will probably be some little while before it is in a position to commence business and make loans, but it will probably be called the Agricultural Mortgage Corporation Limited.

When the Company is incorporated the Minister of Agriculture and Fisheries is empowered to render very considerable financial assistance to the company. Thus the company will obtain from the Exchequer a guarantee fund up to three-quarters of a million (£750,000), and this fund will be free of interest for a period of sixty years.

Then the Treasury may subscribe to the debentures issued by the company to an extent of one and a quarter millions (£1,250,000), such subscriptions to be deemed a local loan within the meaning of the National Debt and Local Loans Act, 1887, and further the Treasury may agree to procure the underwriting of the debentures of the company to an amount of five millions (£5,000,000).

As we explore the provisions of the Act it will be soon realised that the cost of administration of the company, operating as it will do all over the country, will be very high, and probably by far the most useful of the financial aids is that the Minister will pay £10,000 a year for ten years as contributions towards such costs of administration.

Though, as stated at the commencement of this article, there is no public control in the ordinary sense over the funds so furnished, yet there are provisions by which the Treasury will be kept fully informed of what is being done.

Thus the memorandum and articles of association of the company must be approved by the Minister, and they must contain a provision for the nomination of one of the directors by the Treasury.

Also dividends on the share capital are limited to 5 per cent., and whereas, as has been pointed out, the Act of 1923 permitted mortgages of up to 75 per cent. of the value of the land, the present Act requires that no loan on mortgage shall be made by the company in excess of two-thirds of the estimated value of the mortgaged property at the time of the loan.

Also the well-known method which has been in operation for years in the case of building societies, namely, repayment of the principal and interest by yearly or half-yearly payments spread over sixty years, has been provided for.

The company must also create suitable reserve funds and provide for their investment as they accumulate, and the Minister must be furnished with copies of the balance sheets and profit and loss accounts, so by these means he will gain an insight into the way the company is being managed and the extent to which it is fulfilling the objects for which it is formed.

Finally, the company must provide in its memorandum and articles of association for the ultimate repayment of the guarantee fund of £750,000. Though no definite time is fixed for such repayment, yet in certain events a partial repayment must commence within fifteen years of the incorporation of the company, and in certain other events after thirty years from the incorporation, one-half the profits remaining after paying the maximum dividend on the share capital must be allocated to the repayment of the guarantee fund.

In a winding-up of the company the Minister, in respect of his debt, is not to be treated as a preferential creditor, but his outstanding debt is to rank *pari passu* with the paid-up share capital.

To induce the general public to invest in the debentures issued by the company, they are to be regarded as a trustee security as if they were included in s. 1 of the Trustee Act, 1925, or s. 10 of the Trusts (Scotland) Act, 1921.

The character of loans which the Act contemplates are twofold.

Thus, in the first place, there is the loan by way of mortgage on the land of the farmer—this, as we have seen, was the type of loan which was in the purview of the Act of 1923—or loans under the Improvement of Land Acts, 1864 and 1899, for agricultural purposes. Both these types of loan can be undertaken by the proposed company. But, in the second place, Pt. II of the present Act makes provision for short time credits by a much more novel form of instrument, named in the Act an "agricultural charge," by which all farmers, and not merely occupying-owners, who alone are concerned with the first part of the Act, can create a charge on all or any of the farming stock and "other agricultural assets" belonging to them. Such agricultural charge may be either a fixed charge or a floating charge, or both a fixed charge and a floating charge.

Before proceeding to consider the provisions of the Act with regard to these charges, it may be pointed out how important to a farmer may be the question of short time credits.

While waiting for his crops to be harvested, or before his live stock are ready for sale, the farmer will need to supply himself, it may be, with artificial manure, or feeding stuffs, so that there may be no break in the continuity of his farming operations, or he may require to employ additional men in time of stress.

If he is not in possession of the ready cash to meet these needs, a bank will require sound and well-recognised security before it will grant him an overdraft, and as he probably has nothing of this nature to offer, he has in the past had to rely on the indulgence of his merchant for a long extended credit. If this happens, the merchant in all likelihood has to put himself to the expense of a bank overdraft, and in any case the extended credit is reflected in the price the farmer has to pay for the goods obtained. An indulgent landlord will also sometimes allow payment of rent to be deferred. A course of dealing which is expressly recognised in the proviso to s. 34 of the Agricultural Holdings Act, 1923.

(To be continued.)

The Regulation of the Professions in Northern Ireland

By Sir ARTHUR S. QUEKETT, K.C., LL.D.

As soon as a separate Supreme Court came into being for Northern Ireland, questions arose as to the position of the solicitors in that province—both as "officers of the Supreme Court" and as members of an Incorporated Law Society centred at Dublin. The constitutional enactments prior to the establishment of the Irish Free State made all then existing Irish solicitors officers of both the Irish Supreme Courts, thus preserving the status of all who chose to practise in Northern Ireland. The internal regulation of the profession was, upon the initiative of the practitioners in Northern Ireland, placed in the hands of a separate society, a Royal Charter being obtained for it in the year 1922 under the style of "The Incorporated Law Society of Northern Ireland." This society has a council, consisting of a president, two vice-presidents and twenty-one ordinary members; one county delegate is appointed to represent each county in Northern Ireland; and there are also various committees and an officer holding the combined office of secretary and treasurer. The society appoints a court of examiners, two special examiners, and two professors to give lectures. Under an Act passed by the Northern Ireland Parliament upon the grant of the Charter (12 & 13 Geo. 5, c. 17 [N.I.]) the Society obtained, over solicitors and apprentices, precisely the same regulating jurisdiction as the Incorporated Law Society for Ireland had before the separate legal systems were set up.

The existence of separate Supreme Courts also made inevitable a corresponding separation in the bodies concerned with the regulation and qualification of the profession of Barrister-at-Law. A Bar Council and a Council for Law Reporting soon came into being. But it was not until some years had elapsed—and then with great reluctance—that the judges and barristers of Northern Ireland assembled at a meeting held in Belfast in January, 1926, and formed themselves into a voluntary society for legal education and other purposes—"The Honourable Society of the Inn of Court of Northern Ireland." Since that society has been established, admission to the Bar of Northern Ireland is through it alone, and not through the King's Inns, Dublin. The benchers of the society are the five Supreme Court judges, the Attorney-General for Northern Ireland, and six members elected by the Bar. The society has also elected a few honorary benchers, including Lord Atkinson, Lord Carson, Sir Thomas Moloney (formerly Lord Chief Justice of Ireland), and Sir John Ross (the last Lord Chancellor of Ireland). The position of the Inn of Court differs from that of the Law Society, insomuch as the former is purely "voluntary," as are the Inns of Court in London, whereas the latter society depends for its constitution upon the Crown, and upon Parliament for its jurisdiction. The position occupied by the Inn of Court is indicated in the preamble to a statute of the local Parliament, dealing with the stamp duty on admissions to the degree of Barrister-at-Law and as student of the society—"Whereas a society consisting of the judges of the Supreme Court of Judicature of Northern Ireland and the members of the Bar practising in Northern Ireland . . . has been formed for the purpose (amongst other purposes) of regulating admission to the Bar and providing

for the legal education of students in Northern Ireland . . .' This Act provides for the making of annual contributions to the society out of the proceeds of the admission stamp duties. A State contribution was also made towards the formation of the society's library.

The Pharmaceutical Society for Ireland had, since the year 1875, exercised under statute the powers of regulating the qualifications of pharmaceutical chemists and druggists, and the keeping, dispensing and selling of poisons. These powers were exercised subject to the approval of the Lord Lieutenant of Ireland in Council, and the setting up of a separate Government in Northern Ireland made it necessary to establish a separate Pharmaceutical Society within the jurisdiction of that Government, and to establish separate registers of chemists and druggists. This was effected by the Pharmacy and Poisons Act (Northern Ireland), 1925, to which the constitution of the Northern Ireland society is scheduled. The Act gave, to persons whose names appeared in the Irish registers in existence at the time of its passing, the right to registration in the corresponding Northern Ireland registers. The regulations of the Society require the approval of the Minister of Home Affairs; they must be laid before both Houses of Parliament, and may be annulled by the Governor of Northern Ireland in Council on presentation of an address by either House. The registers are kept by a Government registrar, and a Government inspector is appointed for the purposes of the Act. An annual licence is required to enable a person to carry on business as a pharmaceutical chemist or druggist, and a fee is payable for the licence. Incidentally the Act introduced a new "poisons schedule" to replace the list contained in an Act of 1870, the revision of which had long been called for.

The position of the medical profession, and the arrangements by which the qualification and conduct of that profession are controlled by the General Medical Council (established for the United Kingdom as a whole by the Medical Acts) were not automatically affected by the constitution of Northern Ireland as an area of local government. When, however, a part of Ireland received the status of a Dominion—the Irish Free State—and thus ceased to be comprised within the United Kingdom, a new situation arose. The Government of the Free State felt itself constitutionally bound to set up a Medical Registration Council and Medical Register of its own, a step which—apart from some special convention— would have removed from the famous Irish medical schools in Dublin the power to grant diplomas giving a right to registration in the medical register of the United Kingdom. As these medical schools train a large proportion of their students for practice in Great Britain and other parts of the Empire, the restriction of their diplomas to registration in the Irish Free State register alone would have deprived them of much of their utility and attraction in the medical world. This serious consequence was avoided by an agreement concluded in the year 1927 between the three Governments of Great Britain, the Irish Free State and Northern Ireland—largely through the good offices of the General Medical Council—and ratified by Acts of the Parliaments of the United Kingdom and the Irish Free State. By this agreement, the General Medical Council is continued in its former position as respects the whole of Ireland, and the diploma-giving bodies in the Irish Free State retain, so long as they satisfy the requirements of the General Council, the power to hold qualifying examinations for the purpose of granting medical diplomas conferring the right of registration in the United Kingdom medical register. A person registered in the United Kingdom register is, in general, given the right to registration in the Irish Free State register, and provision is made for communication between the British and the Irish Medical Councils as regards cases requiring disciplinary action by either body. The Crown nominee for Ireland on the General Medical Council is now appointed by the Governor of Northern Ireland, but the nomination of members by the Universities and Medical Corporations, and the election of a member of Council by registered medical practitioners throughout Ireland, continue to take place in the same way as before the Irish constitutional changes were made.

The dentists' profession was affected by the constitution of the Irish Free State in somewhat the same way as the medical profession, and a similar agreement was arrived at in 1927 between the three Governments and ratified by the Parliaments at Westminster and Dublin. The Dental Board, medical authorities, and General Medical Council retain their original functions throughout Ireland, whilst persons registered in the Dentists' register of the United Kingdom are entitled to registration in a separate register of Dentists established by the Parliament of the Irish Free State.

The Midwives (Ireland) Act, 1918, had set up a Central Midwives Board for Ireland, and the Nurses Registration (Ireland) Act of the following year created an Irish General Nursing Council. The constitutional enactments—taken by themselves—would have required the setting up for Northern Ireland of two similar separate bodies. It was very soon recognised that such an arrangement would have overweighted the administration; the difficulty was got over by the passing, in the year 1922, of a Northern Ireland statute "fusing" the functions of the two former bodies as respects Northern Ireland, and establishing a Joint Nursing and Midwives Council to deal with the registration and qualification of both professions.

Taken in detail, the various changes, which have had to be made as regards the regulation of the professions in Northern Ireland and the Irish Free State, may seem both complicated and drastic. But, in practice, they do not seem to have led to any narrowing of the professional spirit in any branch, or to lack of harmony between the practitioners of the north and south. Separate administration proceeds smoothly, and will probably stimulate a generous rivalry, which will tend to advance, rather than to retard, professional efficiency and standing.

Why not a Court of Domestic Relations?

It is conceivable, though perhaps not very likely, that a bitter family dispute might give rise to simultaneous proceedings in the Chancery, King's Bench, and Divorce Divisions of the High Court, and also to criminal charges. No doubt in such case each division of the High Court would, so far as possible, work in harmony with the others, but there would certainly be more expense and trouble than if all domestic questions were referable to a single court—except, of course, those giving rise to serious criminal offences. A Court of Domestic Relations, when constituted, would work, if not in *camerâ*, in accordance with the practice of the Chancery Division in dealing with wards of court, with considerable restrictions on publicity, quite unsuitable in trials for crime.

In considering whether such a court should be established, it is impossible to avoid reference to the very remarkable man who has forced this issue on the various Legislatures in the United States, and, by repercussion, in Europe. This is Judge Ben Lindsey, appointed in 1900 judge of the then new Juvenile Court at Denver, Colorado, and who, by the force of his personality, compelled the State Legislature to expand his jurisdiction in the face of the fiercest opposition to his work. He found, as any reasonable person might expect, that a large proportion of juvenile offences arose from bad home conditions, and that it was almost impossible to deal with the offender unless he could also deal with the home. In the words of a pamphlet, stated to be "presented by friends of the Denver Juvenile and Family Court, in commemoration of its Foundation under the Colorado law of April 12th, 1899, and its subsequent development under some fifty other items of

Statutes since enacted," Judge LINDSEY "found that non-support, desertion, and separate maintenance cases involving wives and children were being indiscriminately tried in Justice, County, District, Juvenile, and Criminal Courts. This involved much inefficiency, duplication, and expense; therefore, he established a Domestic or Family Relations Court in connexion with the Juvenile Court, in which practically all these cases are now concentrated. He then started an administrative work, as distinguished from the judicial work under probation visitation officers, so that most of these cases were settled through amicable settlements and reconciliations without formal Court proceedings."

Judge LINDSEY's experiences, methods, and views, appear from his two widely read books "The Revolt of Modern Youth" and "Companionate Marriage," from which it is not difficult to understand the relentless local opposition to some of his activities. It must also be remembered that many of the conditions in Denver are hardly applicable in England. The extraordinary prosperity of the United States enables youths and girls to own motor cars to an extent impossible here, and so, with plenty of money in their pockets, to range far away from their parents and guardians. If the "*Patria potestas*" is the shadow of its Roman self in England, it may practically be regarded as dead and buried in Colorado. Thus the problem of the adolescent differs in each country. This problem would, of course, be far the most important in a Court of Domestic Relations, the quarrels and differences of childless couples being fewer and comparatively simple. Indeed, Judge LINDSEY, who, as he stated in an article written by him in an English journal, had granted thousands of divorces, appears, according to the pamphlet mentioned above, to have renounced that jurisdiction. The Denver Juvenile Court has exclusive jurisdiction of all cases of minors where adoptions are concerned, all delinquents and dependents under eighteen years of age, all cases against or concerning parents or others who contribute to delinquency or dependency of children, and all cases of controversy over the custody of children. "In asking the Legislature to pass the law establishing the separate juvenile and family court, we asked that all divorce cases be left in the other courts, but that the Juvenile Court be given superior jurisdiction over the disposition of children in all dependency cases. The Legislature has done this, and our Supreme Court has sustained them in it. Had divorce cases remained in the Juvenile Court, I am sure we would have been swamped with them, and would not have had time to look after the welfare of the children's part of the case, which is all that concerns a Juvenile Court in a divorce case" (p. 8).

Judge LINDSEY, in effect, appears to have dictated to the Colorado Legislature how best his activities could be regulated, and our Parliament would certainly not pass fifty statutes to deal with a single court in half as many years. Thus, the Denver precedent notwithstanding, the ideal Court of Domestic Relations may be regarded as one having divorce jurisdiction, in addition to that in respect of infants.

In considering the possible establishment of such a court in England, our own system must be carefully examined. Broadly speaking, three main jurisdictions cover those which would be taken over by such a court, namely (1) that of the Chancery Division of the High Court over infants generally and wards of court in particular; (2) that of the Divorce Division to decree divorce, with ancillary orders as to alimony and custody and maintenance of children; and (3) that of the Juvenile Courts established by the Children's Act of 1908. These jurisdictions respectively flowed from the Court of Chancery, exercising the Sovereign's power of *parens patriae*, the Ecclesiastical Courts exercising the spiritual jurisdiction appertaining to marriage, and the general criminal jurisdiction of magistrates in respect of minor offenders.

It cannot be doubted in the first place that the reformer who sought to establish a court to take over these jurisdictions would have a very hard fight with vested interests. The Chancery Division and its predecessor the Court of Chancery have had hundreds of years of practice in dealing with wards of court, and, if the claim were made that the work could not be done better, it would be very well founded. This work would not be yielded readily to the Divorce Court. And, conversely, it is difficult to say whether the Divorce Court would be more unwilling to surrender its jurisdiction in pronouncing divorce to the Chancery Division, or that Division to accept it. And neither Division would desire to handle criminal cases—indeed, the well-known story of the judge and the waistcoat, whether apocryphal or otherwise, is used to enforce the moral that Chancery judges should confine themselves to equity.

Every reform, however, begins with a struggle against vested interests, which may delay, but should not entirely be allowed to check progress. The abstract question must therefore be considered without reference to them.

In practice, it has not been found possible to confine the respective Chancery and Divorce jurisdictions to the High Court. For example, in respect of guardianship of infants, the jurisdiction of the County Court is co-extensive with that of the High Court (see "Annual County Courts Practice," 1928, p. 2042), and s. 7 of the 1925 Act extends the jurisdiction, with certain reservations, to magistrates. Similarly, since 1895, magistrates have had power to make separation and maintenance orders, but not divorce decrees, in cases where the Divorce Court, by reason of poverty or otherwise, would be inaccessible. Then again, s. 2 (2) of the Legitimacy Act extends the divorce jurisdiction under the Legitimacy Declaration Act of 1926 to the county court. It may be added that, although the King's Bench Division has less to do with family matters than the others, the judges of that Division have plenty of opportunity of learning divorce practice, both from assisting their brethren in that Division, and the work of hearing divorce petitions at Assizes.

The argument may be put forward that for a satisfactory Court of Domestic Relations, a Judge LINDSEY is necessary, and we have not his duplicate. This can be easily met. It would certainly be desirable to appoint the right man in the first instance, but, practically speaking, a court with traditions evolves him from almost any material. This is well illustrated in Chancery. The qualifications of prospective Chancery judges to deal with wards are practically disregarded on appointment, and bachelors, husbands, widowers, men childless or with large families, short-tempered or easy-going, are indifferently chosen, principally on their success as advocates; yet the tradition is handed from judge to judge and from staff to staff, and the work is so good that it is all taken for granted, and the public never notices it.

The practical question remains for consideration whether the multiplication of jurisdictions causes expense by overlapping, or other unnecessary hindrances to justice.

(*To be continued.*)

Urban Quietude by Law.

RECENT correspondence in the Press shows the pains and discomfort inflicted on people sensitive to noise by some of the instruments of modern civilisation. A considerable number of the sufferers state that, although they are fond of fresh air, noise at night renders sleep with open windows impossible. The question may therefore be worth discussing whether, under the present law, or any practicable modification of it, legal havens of silence can be established, even in our large towns.

In respect of sound and vibration caused by noisy trades and factories it may be pointed out that the law already makes discrimination between one neighbourhood and another, and the cases of *St. Helen's Smelting Co.* v. *Tipping*, 1865, 11 H.L.C. 642, *Crump* v. *Lambert*, 1867, L.R. 3 Eq. 409, and *Sturges* v. *Bridgeman*, 1879, 11 C.D. 852, may be mentioned in illustration. At p. 865 of the last-mentioned report occurs the

well-known dictum of THESIGER, C.J., that what might be a nuisance in Belgrave-square would not necessarily be so in Bermondsey. These cases were all considered and approved in *Rushmer* v. *Polsue & Alfieri Ltd.*, 1906, 1 Ch. 234, in the judgment of the Court of Appeal, very shortly affirmed on the appeal to the House of Lords, reported 1907 A.C. 121.

Excessive noise from one source may amount to a private or even a public nuisance, and in either case the law will interfere. A judge has, of course, power to grant injunctions in respect of noisy animals such as cocks crowing at dawn or dogs howling at night, and continuous piano lessons and late and noisy festivities may also be restrained. Many urban councils have bye-laws against noises, such as that rendering a householder liable to fine if, after signed complaint as to a noisy animal by three neighbours, he does not abate the nuisance within a week. In quiet neighbourhoods, with a common ground landlord, the covenant against annoyance to neighbours is practically invariable, and there may even be one against keeping fowls or other animals.

Those who dwell in good residential neighbourhoods are therefore, on the whole, very well protected by law against the nuisance of noise caused by persons living near them. Landowners and their agents who particularly wish to attract people who, for reasons of health or otherwise, wish to avoid noise, might perhaps advertise the terms of stringent covenants to this end more than they do at present.

There remains the question of traffic. The bad sleeper who is protected from howling dogs, crowing cocks, and musical instruments, may find such protection useless if his ears are assailed by noisy vehicles. The increase in the number of cars may render the noise and vibration of traffic worse than it ever has been, although the clang of hoof and iron tyres on macadam roads or setts is not so familiar to the present generation as it was to the last. More than efficient substitutes exist in enormous lorries with their solid tyres and rattling machinery, steam engines drawing two or three trucks loaded with stones or circus properties, cars with every kind of discordant horn and gear-changing, and motor-cycles with unsilenced exhausts, which, although they may offend against the law, frequently do so with impunity. And even the occasional horse-drawn vehicle is by no means noiseless on modern road surfaces.

In present circumstances, and under modern law, no one who sleeps in a bedroom facing a public street in any fair-sized town can be protected from such noises at any time of the night or day. Very few cars may pass through a quiet street, but one or two noisy vehicles passing in the hour when the victim of insomnia seeks his sleep may wreck the whole night's rest. Nor can injunction give relief; the vehicles may be a hundred miles away the next day, in different directions, or, if horse-drawn, unidentifiable.

This leads to the question of the last resort—the physical barrier. The issue to be faced is whether a particular landowner has power to fence off certain streets by night in this way, or whether an urban council or other authority can do so.

In effect, this is a town-planning problem. In respect of land in the course of development in the suburbs of London and large cities, it may be observed that a number of owners do place barriers at the entrances of their new streets, though as a rule tenants have no guarantee that such barriers will be maintained, and probably a council would now require them to be abolished before taking over the repair of the roads.

Possibly, however, a landowner might represent to his council that he was especially trying to attract those to whom quietude at night was a necessity, and that, to ensure it, he had planned to keep all gates closed between, for example, 11 at night and 6 a.m., with perhaps a night watchman at one entrance to admit the cars of private residents (under covenant if their cars have the privilege of admission after hours to make as little noise as possible). In such case, since a partial dedication of a road is lawful, possibly roads of the estate might be taken over, but if not, the owner would have to keep them in proper condition, and of course he or his tenants would have to pay for the night watchman. The law would therefore appear to permit an owner to establish such a scheme in respect of his land so far as it was not crossed by any existing public highway, or even if it was so crossed, by the power given to close the highway. And moreover it seems extremely likely that in these days of excessive traffic noises, a judge would construe the word "amenity" in s. 1 (1) of the Town Planning Act, 1925, in such a way as to give effect to a scheme to control traffic by day or abolish it by night, even in an area where the land was owned by various persons, some of whom might object to barriers. In such case, their objections would be treated in the ordinary way like those on other grounds.

Thus, in new neighbourhoods "zones of silence," or areas where noisy traffic could be suppressed at night altogether, might perhaps be established without altering the present law.

For areas already developed, however, the problem is a different one. The streets are already public highways, and open day and night. The powers of town planning in places already developed are limited under s. 1 (2) of the Act of 1925 to special areas of "architectural, historic, or artistic interest." Obviously these powers are to be exercised for preserving such interest, and not for the privacy of the inhabitants. Indeed, less rather than more privacy is indicated, and presumably, to take an example just outside our area, no encouragement would be given to a local body at Melrose if it sought to prevent nocturnal access to the Abbey.

New "zones of silence" in London or any developed city would therefore require legislation by way of extension of the Town Planning Act. The idea may appear to some to be altogether impracticable. Perhaps the best answer to such persons will be to point out that at least three such areas exist in the heart of London, namely, Gray's Inn, Lincoln's Inn, and the Temple. These are all shut at night, without manifest inconvenience to the public. Gray's Inn has tramways on two sides of it, so perhaps can hardly be described as silent at night, but Lincoln's Inn is quiet enough. The porters of all the Inns have orders to prevent undue noise either by day or night. A former Duke of Bedford also maintained permanent barriers in Bloomsbury, but the pressure of traffic to King's Cross, St. Pancras and Euston was too heavy, and they had to be abolished. There are, however, various parts of London and other cities in which areas as large as the Temple might be cut off from through traffic at night with little inconvenience, and in these areas nursing homes could be established with confidence and the nerve-racked would have reasonable chance of sleep.

Two more sources of noise may be mentioned. The secluded areas would be chosen so as to avoid trams and railways, but there would remain church clocks, and—a delicate matter—babies. Church clocks which strike the quarters all through the night are anachronisms, and if from a given date ecclesiastical authorities were required to silence them when ordinary people were asleep or trying to fall asleep, no injustice would be done. Exceptions might be made, as possibly in the case of Big Ben, though even that was silent during the prevalence of air raids without manifest public inconvenience.

A crying baby may of course keep an invalid or nervous person in the next house or flat below or above awake all night quite as effectively as heavy traffic—and even in intervals of silence the sufferer may wait for the child to cry just as CARLYLE did for the cock to crow. Possibly in a zone of silence specified houses or streets might be set aside for unmarried adults and old couples, but a covenant against keeping or knowingly suffering the appearance of babies could not be well received in an English court of law. It may perhaps also be observed that the child's noise is, and is intended by nature to be, the biggest nuisance to those nearest to it, who for their own sakes will do what they can to abate it and so relieve their neighbours.

May a Bankers' Draft be Countermanded?

By L. M. MINTY, Ph.D., B.Sc., B.Com., LL.B.
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BANKERS' drafts issued to customers in exchange for their cheques are of two kinds:—

(1) Drafts drawn payable on demand or after date by a bank upon the Bank of England, or by a bank upon another bank as its agent. The former are still used in payment of government dues in ports where the collector of customs is instructed not to take payment in any other form than by draft on the Bank of England. It was formerly the practice among small country banks which had no head office in London or branches outside their own district to issue drafts upon their London clearing agents and their agents' branches. The majority of these small banking companies have since amalgamated with the leading joint stock banks, which have branches all over England, so that it is now rare to handle a draft drawn by a country bank upon its London agent, the most numerous of this type, however, being those drawn by the joint stock banks upon their Scotch and Irish affiliations. Both drafts drawn by other banks upon the Bank of England and by English banks upon affiliated Scotch and Irish banks are drawn "by one person upon another," and, if payable on demand, are therefore cheques within the definition contained in s. 73 of the Bills of Exchange Act, 1882. Drafts similarly drawn payable after date are bills of exchange within the meaning of s. 3 of the Bills of Exchange Act, 1882, and the same rules govern the liabilities attaching to their collection or payment as to cheques and bills respectively.

(2) Drafts drawn by the branches of a joint stock bank on their head office or other branches and there made payable. It is with these kinds of drafts that this article is primarily concerned. They may be divided into two further categories—

(*a*) Drafts drawn by branches on head office or other branches payable on demand usually worded as follows:

2d.
Stamp.

UPTOWN BANK, LTD., Henrietta Street, Cardiff,
18th July, 1928.

£3,000.

On demand pay . . . Cox, Box & Co. . . . or order The sum of Three thousand pounds.

IVOR COLD, *Manager*.
ED. ACHE, *Cashier*.

Uptown Bank, Ltd.,
27, Threadneedle Street,
London, E.C.2.

(*b*) Drafts drawn seven, fourteen, or thirty days after date usually worded as follows:—

Due 1st July, 1928. Impressed Bill or note, stamp. 9d.

UPTOWN BANK, LTD., Henrietta Street, Cardiff,
£65 : 1 : 6. 14th June, 1928.

Fourteen days after date pay without acceptance . . . Cox, Box and Co., Ltd. . . . Sixty-five pounds, one shilling and sixpence. Value received at this office.

IVOR COLD, *Manager*.
ED. ACHE, *Cashier*.

Uptown Bank, Ltd.,
27, Threadneedle Street,
London, E.C.2.

Bankers' drafts drawn in either of these forms are by nature an anomaly. They are not bills of exchange within the definition of s. 3 of the Bills of Exchange Act, 1882, because, being drawn by a branch on its head office, they are not "drawn by one person on another." In the case of *Capital and Counties Bank* v. *Gordon*, 1903, A.C. 240, Lord LINDLEY (at p. 250) definitely ruled that such drafts could not be bills of exchange because "an instrument on which no action can be brought by the drawer can hardly be a bill of exchange within s. 3 of the Act, whatever it may be called in ordinary talk."

From the fact that they are not within the definition of a bill of exchange, bankers' drafts have these peculiarities:—

(*a*) They cannot be drawn payable to bearer on demand. They must be payable to order on demand, otherwise they come within the definition of a banknote and their issue by joint stock banks would be illegal.

(*b*) Not being bills of exchange, bankers' drafts payable on demand are not within the definition in s. 73 of the Bills of Exchange Act, 1882, of a cheque and cannot be validly crossed. It is for this reason that banks in practice do not issue drafts on themselves bearing a permanent crossing. If drafts are, as frequently happens, paid into an account and collected through a clearing bank, they frequently bear the crossing stamp of the collecting bank, but such is used only for convenience in enabling the paying bank to trace the channel of collection, and has no legal signficance. Section 17 of the Revenue Act, 1883, applies ss. 76 to 82 of the Bills of Exchange Act to "any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and shall so extend in like manner as if the document were a cheque." It will be seen that this section does not, however, apply to bankers' drafts, because they are issued by a bank to a customer and are not "by a customer of any banker."

(*c*) Bankers' drafts drawn at seven, fourteen days, etc., after date are, for the reasons given, not bills of exchange, yet banks in practice treat them as entitled to three days' grace. The rule of the law merchant making days of grace applicable to bills is now contained in s. 14 of the Bills of Exchange Act, 1882. But the Act does not apply to bankers' drafts drawn by branches of a bank on its head office. Before the law merchant was incorporated in the common law, the Bank of England, under its Charter of 1709, had a monopoly of joint stock banking, and joint stock banks did not come into existence in the provinces until the amending Act of 1826, and in London until the Act of 1833 (3 & 4 Will. IV, c. 98). By that time the law merchant had been incorporated in the common law. It is hard, therefore, to maintain that bankers' drafts are entitled to three days' grace under the law merchant. Whether commercial custom of subsequent origin can confer on such instruments the privilege of days of grace is an open question. One often wishes that some litigiously minded customer would present such a draft three days before the due date as computed by the paying bank, and settle the point.

The principal reason why a banker's draft is demanded instead of a customer's cheque is that in the case of a banker's draft no doubt can arise as to the solvency of the drawee. If A is due to pay B a sum when B does something, say hand over the deeds relating to property, B may not be satisfied to take A's cheque because A may not have funds to meet it when it is presented for payment, or A, before it is presented for payment, may countermand his mandate to the bank, in which case B has nothing more than the right to sue A on the instrument, which in practice is worth little more than the security of the debt itself. To satisfy B's conditions, A applies to his bank to issue him a draft, and hands his cheque for the amount plus the stamp required. The bank debits the cheque straight away to A's account and issues in its place a draft on its head office payable to B or order as requested by A, either, (*a*) payable on demand, or (*b*) at seven, fourteen, etc., days after date. Whatever is the subsequent position between A and the bank which has issued the draft, it is no concern of B. He is entitled to payment and the bank will refuse payment only if it has good reasons which it considers sufficient to constitute a defence in any action brought by B against the

bank for non-payment. One may consider the following sets of circumstances which might arise :—

(1) The draft in the first instance is obtained by fraud from the issuing bank. Suppose A is a company, and its secretary by forging signatures to one of the company's cheques obtains a draft from the company's bankers which he transfers to B for good consideration. The issuing bank obviously cannot debit the cheque to the account of A, but can it refuse payment of the draft to B or to a subsequent holder ? The answer depends upon whether a banker's draft is in the strict sense a negotiable instrument. Numerous decisions, *Goodwin* v. *Robarts*, 1876, 1 N.C. 476, *Rumball* v. *Metropolitan Bank*, 1877, L.Q.B. 194, *Bechuanaland Exploration Co.* v. *London Trading Bank*, 1898, 2 Q.B. 658, *Edelstein* v. *Schuler*, 1902, 2 K.B. 144, to mention only a few, have established that modern mercantile usage can annex the incidents of negotiability to an instrument which did not come within the category of instruments created by statute or adopted from the ancient law merchant. If a banker's draft is a negotiable instrument in the strict sense the issuing bank has no right in the circumstances to refuse payment, and the fact that it is drawn "to order" shows it was intended to be negotiable. To prove that the draft is a negotiable instrument expert evidence of bankers and merchants as to the custom in dealing with bankers' drafts would have to be called. In practice bankers' drafts are seldom transferred by the payees to others, but no such condition is attached to them by the banks which issue them. If the holder were a party to the fraud he, of course, could not be a holder in due course and could not enforce payment.

(2) In the event of a draft being lost or stolen while in the possession of the customer before it is indorsed by the payee, notice having been given by the customer to the issuing bank, is the issuing bank obliged to refuse payment ? The answer here is that no holder can sue the bank in the event of payment being refused, and if the information is correct, the bank runs no risk in returning the draft "payment countermanded." The draft having been stolen or lost before it was indorsed the issuing bank has notice that any indorsement must be a forgery. Whether a banker's draft is or is not a negotiable instrument makes no difference in this set of circumstances, because no one can be the equivalent of a holder in due course of the draft under a forged indorsement. In practice the issuing bank registers the stop against payment and protects itself by obtaining an indemnity from its customer. If it were to disregard the customer's notice and pay the draft it would apparently be protected by s. 19 of the Stamp Act, 1853 (*cit. infra*), in which, it must be noted, unlike ss. 60 and 80 of the Bills of Exchange Act, 1882, there is no mention of either "payment in the ordinary course of business," "in good faith" or "without negligence."

(3) Supposing the draft is stolen after it is indorsed by the payee, and the payee or the bank's customer registers a stop against payment ? Here the bank's liability depends upon whether or not a banker's draft is a negotiable instrument. If it is in the strict sense negotiable, a subsequent *bonâ fide* holder for value would be entitled to payment. Section 19 of the Stamp Act, 1853, provides : "When a draft payable to order on demand on a banker purports to be endorsed by the person to whom it is payable, it shall not be incumbent upon the banker to prove that the endorsement or any subsequent endorsement was made by or under the direction or authority of the person to whom the draft was made payable before it was forged or after loss." This section is still in force and overlaps s. 60 of the Bills of Exchange Act in so far as it includes banker's drafts not included under s. 60. A bank would, therefore, receive its statutory protection even though it received a letter from its customer or the payee indicating that the draft might be presented by a person who might, or might not, be a *bonâ fide* holder for value. It is worth noting that the section applies only to demand drafts, not to drafts payable seven or fourteen days after date, payment of which to anyone, not the true owner, would render the bank liable for conversion.

(4) One can imagine a further complication. Supposing that the bank as in (3) receives notice from its customer or the payee indicating that the draft has been stolen or obtained by such fraud that the person presenting it may not be a holder in due course, and when the draft is presented it bears a crossing stamp or a cashier's stamp, or from other information head office gets to know that it has been paid in at another of its own branches, not wanting to damage its own credit with another customer, can it pay the draft and rely upon the section conferred by s. 19 of the Stamp Act, 1853, above cited ? The answer is, positively, no. As paying banker it may obtain the statutory protection given by s. 19, but it receives none as collecting banker, since the draft is not within s. 82 of the Bills of Exchange Act or s. 17 of the Revenue Act, 1883, above cited. The bank might, therefore, be still liable in an action brought by the person who could prove he was the true owner and the question of acting "in good faith" "without negligence" would not arise.

The Equipment of a Solicitor's Office.

This question raises problems the solution of which depends to some degree upon considerations of £ s. d., though much can be done by the adoption of various kinds of equipment of a comparatively inexpensive nature. Moreover, the question of expense should have relation to the saving of time and the attainment of higher efficiency in which improved and more up-to-date methods result.

It is proposed to enumerate various articles which are important from an equipment point of view, and to consider their spheres of usefulness and the purposes which they respectively serve.

Typewriters.

It can be asserted, without qualification, that a typewriter is now an essential article in a solicitor's office, and it would be presumptuous on the part of the writer to make suggestions as to the particular make or model which should be acquired.

There are numerous standard machines produced in this country and abroad which have thoroughly proved themselves in the world of professional and commercial business, and there are first-class English machines which hold their own with the foreign article. Recent improvements and the use of an electric motor now enable a typewriter to be operated by a mere touch of the keys, the pressure on which can be automatically adjusted so as to permit numerous carbon copies to be taken at the same time. There is already one machine of this nature on the market.

There are, however, a few general principles to be borne in mind, the first of which emphasises the importance of getting a good make of machine. The pressure and strain to which a typewriter is subjected are not always appreciated, and trouble frequently arises at an unnecessarily early stage unless the machine is very strongly made. For this reason the machine should not be of too light a construction, though the best modern makes are remarkably light in their operation, whilst the machines themselves are strong and reliable.

The second point to bear in mind is the importance of the machine being kept thoroughly clean and oiled, and the type should be brushed daily with a stiff brush to ensure good work.

The use of tabular stops for the purpose of margins greatly facilitates the output of work, as it enables the required spacing for abstracts, etc., to be readily and quickly operated.

Dictating Machines.

There are first-class machines of this nature on the market, which are of great assistance to the busy practitioner. The

crowded desk is all too frequently a sign of wasted time and effort, and indicates that things are getting behind.

Even if one rings the changes on two or three first-class shorthand writers, it must be borne in mind that they cannot be producing work on the machine whilst they are taking down the material to be transcribed, and this waste of time is negatived by the use of an instrument such as we have referred to.

Briefs and other lengthy documents can be dictated at a rapidity beyond the capacity of the average stenographer, and the value of either of these machines for the purpose of recording costs immediately after an interview or letter is so obvious as to require no further emphasis.

These machines take the fastest dictation as accurately as the slowest, and, being always available, frequently enable a letter or draft to be dictated when the required clerk is not available.

Duplicators.

These are of considerable value to the busy office. Circular letters relating to matters in which creditors are concerned can be rapidly turned out, and an appreciable percentage of practitioners have some appointment or other which necessitates the sending out of notices and letters to a number of people.

As regards trust estates also, nothing is more appreciated by beneficiaries than to be kept supplied with copies of statements and accounts, and the use of a duplicating machine makes this a comparatively simple matter.

Drafts of mortgages and other standard documents can be run off from time to time as required, and the modern processes can reproduce several different colours (pen or pencil) by one operation. The reproductions are extraordinarily good if proper care is taken, and there has been a great improvement in recent years with respect to the operation of these machines and the speed at which they can be worked.

Stencils.

These are necessary on all duplicating machines, and those mentioned in the advertising columns of this Journal can be confidently recommended. Care should be taken to see that the stencil is suitable to the roller in use, as some of these are of a harder material than others, which has an important bearing upon the nature of the stencil to be used.

Stationery.

This wide range of articles does not readily permit of detailed treatment, particularly as many of the commodities required are in the category of necessaries, and there are numerous concerns which can be relied upon to supply first-class goods of the nature desired.

A good ink for engrossments is very necessary, and it is important that typing carbons should be absolutely reliable. It is sometimes practicable to use a carbon copy of a lease as the counterpart, if special haste is necessary, but it is essential that the carbon should be legible and reasonably lasting.

Having regard to the extent to which typing is now used for engrossing purposes, the question of a first-class typewriter ribbon is more vital than ever, and a perusal of the advertising columns of this Journal will recall various articles of stationery, etc., of an indispensable nature which have stood the test of time and experience.

Letter books of a kind appropriate to the system adopted for duplicating or copying letters, must of course, be provided. A cheap and efficient binder is now available for filing and indexing rapid roller and carbon copies of letters.

Filing Systems.

It is difficult to enlarge upon the relative merits of one method and another so far as the filing of papers is concerned. This question has already been dealt with in a general way in one of the articles relating to the organisation of a solicitor's office, and many of the more modern systems have much to commend them and merit careful consideration.

A card index is much better than the old-fashioned method of keeping a book, and convenient receptacles are usually provided by the makers.

Deed Envelopes.

Whatever the filing system adopted, a good type of document envelope is essential, and there is a type of gussetted envelope now on the market for the preservation and storage of deeds and documents which is particularly good and obtainable at a reasonable price.

Desks.

The importance of a large and convenient desk is frequently not realised by professional men, many of whom would be well advised to inspect the more modern type of furniture, with extensions, side panels and other conveniences.

While the roll top desk has advantages from the point of view of pockets and secrecy, it is not usually large enough for the legal fraternity, to whom as much space as possible is very advantageous—so long, of course, as the extra accommodation does not result in an unnecessary accumulation of papers.

The moral for the profession seems to be: Have plenty of room on your desk, but do not allow it to become congested with papers—whether current or not. For this reason, a small side table placed in some convenient position near to the practitioner's chair is a great advantage, as papers can then be moved to this table from the main desk, which can be cleared frequently and rapidly.

The writer has derived great advantage from the fixing of two brass rails, supported by four small pillars about 10 inches high, at the back of his table, as these rails accomodate several trays and the space thereunder can be used for papers so as to leave the front of the desk clear for immediate matters.

The best type of desk has also convenient drawer space and simple locking arrangements.

Trays.

The liberal use of trays for current matters, letters, etc., is strongly recommended. Indeed, letters and papers which are not properly tied up should never be taken from one room to another or left on a table, except they have been placed in a suitable type of tray, of which there are many varieties.

Tables.

The advantage of occasional tables in the principal offices has already been dealt with, but it is desired to refer briefly to the modern type of typewriting table, which is a great improvement on its predecessors.

It is planned so that the "knee-hole" is in the most convenient place and the table generally the ideal height, and the small drawers available can be used for stationery and the care of current papers.

Holders.

An adjustable holder for an arc reading lamp over the desk in the form of a telescopic arm, and a similar arrangement for the telephone, are a great advantage and save time. Moreover, the position of one's lamp is a very material factor from the point of view of eye-strain, and its importance cannot be unduly emphasised.

Chairs.

Considering the thousands of hours per year which have to be spent by solicitors and others in their offices, it is surprising that more care is not taken to procure more comfortable and convenient chairs.

Many different patterns are now made, both for the senior members of a staff and for the typists, who should no longer be expected to work for many hours continuously on a stool. Comfortable chairs in a waiting room are also much appreciated by clients, and a few extra pounds in this direction can be advantageously spent.

Bookcases.

There is an increasing tendency to utilise the modern type of built-up bookcase, which has many advantages over the ordinary kind.

In the case, however, of Law Reports, it is sometimes found that the simplest and cheapest method is to have shelves put into the wall and suitably stained.

So far as the more important law books are concerned, however, it is an advantage to keep these under glass, as even the most modern of offices seem to enjoy a generous quota of dust.

Deed Boxes.

These are essential whether a strong room is available or not, though it must always be borne in mind that no ordinary deed box can be absolutely fire-proof or burglar-proof. At the same time, the best make of deed box would afford considerable protection in the case of a small fire, and some of them can be said to be really fire-resisting.

Steel Cabinets.

This reference to fire-resisting qualities brings to mind the advantage of steel cabinets for the filing of papers, and various kinds are now available at a quite reasonable cost, which compares favourably with the expense of wood.

Safes.

At least one safe in the office is essential, and most practitioners find it advisable to have two or three more, which are usually placed in the rooms of the principals and chief clerks.

The undoubted ideal is to have a strong room, but this is a very expensive item and is, of course, impracticable in the case of many suites of offices, which can only utilise the nearest available public strong room. As, however, this is frequently some distance away, even in a large town, it is very necessary for the practitioner to provide an appreciable amount of safe accommodation within his own offices. Indeed, a solicitor might subject himself to a claim for negligence as the result of loss or damage by fire, etc., if he were to store title deeds elsewhere than in a safe or strong room.

Accessories.

Rubber stamps can frequently be used with advantage, and a good date-indicating pad with diary combined is a great asset.

It is convenient to have on one's desk a receptacle for small pins, paper fasteners, clips, etc., and a pen and pencil rack is also useful.

Law Books.

This has been dealt with in one of the previous articles, but is referred to again, owing to the extent to which law books constitute one of the most important parts of the equipment of an office.

As already indicated, a standard book on conveyancing and general precedents is essential, and standard works on the main branches of law should find their place in the library of every practitioner.

Owing to the expense incidental to the purchasing and binding a series of Law Reports, it is most important to have a good digest. Indeed, the majority of practitioners will find themselves able to cope with nearly all their legal posers and problems with the aid of a *completed* work of the kind.

It is desired to conclude the consideration of this interesting subject by striking the note of "up-to-date-ness." If the practitioner is wise, he will be constantly on the look-out for modern ideas and improvements, and a perusal of the columns of his favourite journals will often bring to light equipment which will save for him considerable time and expense.

It is not merely a question of time and money, however, but also of anxiety and personal trouble, which re-act so adversely upon all those who work together in the same office. Sufficient has been said on the question of the right "atmosphere" to obviate further emphasis on the importance of the team spirit, but experience shows that slipshod methods and faulty systems in solicitors' offices have a great deal to do with the introduction of that hasty criticism and unnecessary fault-finding, which so quickly destroys that peace of mind and cheery environment which are, indeed, a "consummation devoutly to be wished."

We should like to add that details of the various office fittings and accessories referred to in this Article, appear from time to time in the Advertising Columns of "THE SOLICITORS' JOURNAL." H.

Imprisonment for Debt.

IF a county court judge who has served for over twenty years in office gives it as his considered opinion that imprisonment for debt should be abolished, as Sir EDWARD PARRY does in his latest book "The Gospel and the Law," his opinion must command respect. Equally, however, must the same be said of a Select Departmental Committee, appointed in 1909, which heard Sir EDWARD himself, then Judge PARRY, and other county court judges and persons having knowledge and authority, and unanimously arrived at the conclusion that imprisonment for contumacious refusal to pay a debt should be retained as a feature of our law. Clearly, therefore, the point is very debatable. It may not be generally known that the experiment of abolition was once made in respect of debts under £20, but abandoned in less than a year, when the former law was revived, though on different lines. This was in 1844, and probably was largely due to the vivid description of the Fleet Prison in the then recent novel of "Pickwick." It is on record that, before the rigidity of the ancient law was mitigated by the Insolvent Debtors Act of 1815, a woman died in Horsham gaol after having been incarcerated there for forty-five years for a debt of £19. The theory of our present law is, of course, that imprisonment merely for failure to pay simple contract debts is abolished, but may be imposed on a debtor who can pay, but will not pay after he has been ordered to do so. The procedure for this is regulated by s. 5 of the Debtors Act, 1869, and the need for "evidence of means" as a condition precedent to committal is well known to the public. The judge has considerable discretion, alike in the interpretation of "means," the admission of evidence of means, and the nature of the order made. Thus he can discriminate and take into account the merits both of creditor and debtor, and either make no order at all or a nominal order, or require the whole debt to be paid at once. This elasticity has many advantages, but conversely it brings in a "personal equation," and a debtor who would be committed by one judge might feel himself fairly safe in facing another.

The great majority of committals, however, are not in respect of simple contract debts, but of maintenance and affiliation orders, and there are also a considerable number of rate defaulters. To these may be added a comparatively small number of committals for non-payment of income tax, and evidence of means is not necessary in any of these cases. Obviously a man whose income is subject to tax has had means to pay it, and maintenance and affiliation orders, which can be revised on proof of altered circumstances, are based on proved ability to pay.

The last resource of the present law is, as the Committee pointed out in their report, the only way to deal with a small but definite class of persons who desire the good things of life without the inconvenience of paying for them, and will steadfastly avoid that inconvenience unless and until the law substitutes a greater one. These people undermine credit, and, if the present law were repealed, the small tradesman might refuse to give credit to workmen temporarily out of employment. It must also be noted that the great prevalence

of hire-purchase agreements makes the remedy of execution valueless in a large number of cases, and, amongst those who are deliberately dishonest, the wife or family will claim furniture and effects which the husband's or father's creditors seek to attach.

The Committee recommended that imprisonment in respect of ordinary debts should be confined to those for necessaries or debts arising from non-payment of damages for torts, but so far Parliament has ignored the report, which has suffered a fate shared by that on the Royal Commission on Divorce. This reform would largely meet Sir EDWARD'S strongest criticism, as to the abuse of the law by the tallyman and moneylender.

By far the largest single cause of imprisonment for non-payment of debt arises from default on maintenance and affiliation orders, the figure, as appears from a letter (*Times*, 11th inst.) by the Chairman of the Prison Commission, for 1927 being 6,759; committals for default in rates is 1,926. The other figures are by county courts 2,875, in default of income tax 193, and other miscellaneous cases 379; the total being 12,132. This total, whereof 99 per cent. are those of men, and the vast majority wage-earners, is not very satisfactory. And probably the reformer will find that the maintenance order, as well as being the greatest cause of imprisonment for debt, also gives rise to the greatest resentment. HORRIDGE, J., has expressed surprise from the Bench at the ease with which an adulterous wife can obtain such an order, and possibly even a greater source of injustice is the concession of orders to wives who decline to render their husbands their rights. The uneducated man who is so treated naturally finds a difficulty in explaining his grievance in polite language in open court, perhaps with ladies on the Bench, and an order is made against him because he cannot put his case properly. The police court, with its press of debt and motoring cases, appears to be a very unsuitable tribunal to make an order for the practical equivalent of divorce without liberty to re-marry. By whatever court these orders for permanent legal celibacy are made, however, they are hardly likely to leave those bound by them with the impression that they result from a just and humane law.

A Conveyancer's Diary.

BY SIR BENJAMIN L. CHERRY, LL.B., one of the Conveyancing Counsel of the Court.

The General Conditions of 1925 (Edition of 1928).

A 1928 Edition of the General Conditions of 1925 has been issued by The Law Society. To avoid any ambiguity that might arise in the interpretation of a contract for the sale of land incorporating the General Conditions of 1925, but containing no specific reference to any one edition, Condition 38 (1) provides that "any particular edition [of the General Conditions of 1925] may be referred to by stating the year of publication thereof, but, save where a particular edition is mentioned, reference to these Conditions shall be construed as relating to the edition last published before the date of the Contract."

The alterations effected by the new edition are comparatively few. Some are mere verbal changes; one or two have been made to remove ambiguities felt in certain quarters as to the effect of certain sub-clauses, and others have been rendered necessary by the changes in the law and practice since the publication of the original edition.

There is what appears at first sight a mere verbal alteration contained in Condition 4 (1).

The purchaser is, by that condition, now required amongst other things, to "sign an agreement in the form subjoined to these conditions or *in a separate form* for the completion of his purchase." The words in italics are new. They introduce a new policy to which effect is given in the 1928 edition.

There are now issued:—

(*a*) A print containing particulars, special conditions and contract only. Clause 1 of the Special Conditions provides that "the property is sold subject to the General Conditions of 1925 . . . and a purchaser shall, *if he so requires*, be furnished by the vendor with a print of the General Conditions of 1925." See also the alterations in Condition 38 (1).

(*b*) A print containing particulars, special conditions, the General Conditions of 1925 and the contract.

The change of policy seems a perfectly natural one; for, as the General Conditions of 1925 are now familiar to all conveyancers, it will seldom (if ever) be necessary or expedient to use the longer form for the purposes of the actual contract.

No doubt the 1928 Edition will in due course appear in new editions of text books.

Alterations in Conditions 6 (4) (dealing with rescission when possession has been given before completion) and 36 (2) (*c*) (which renders the contract void on failure of a purchaser to comply with a notice to make good a default) are designed to make it clear that certain rights of the vendor are not, in the circumstances, to be prejudicially affected. Thus the proviso in the former sub-clause is not to prejudice the vendor's power to re-sell and forfeit the deposit where the purchaser is in default. The contract is to become void, in the latter case, but "without prejudice to the Vendor's right to resume possession (if given up) and recover documents belonging to him."

There is a drafting alteration in Condition 7 (4) making the meaning clearer. The sub-clause now provides that: "The Vendor shall, as from the date when interest becomes payable under this condition have the option (to be exercised in writing at any time before actual completion) of taking the rents and profits or an apportioned part thereof (as the case requires) less the outgoings or an apportioned part thereof, up to the date of actual completion in lieu of the interest otherwise payable under this condition . . ."

There are also minor verbal alterations in Condition 12; while in Condition 13 (2) (*b*) and (4) (iii) (dealing with a sale of rent-charges or of land subject to rent-charges) the purchaser is bound conclusively (not merely unless the contrary appears) to make certain assumptions. An amendment to the like effect is made in Condition 15 (6) (7), to which is added an eleventh sub-clause to the effect that: "In this condition 'superior lease' means the lease creating the term out of which the interest sold is immediately derived."

It is made clear in Condition 18 (2) that the rights thereby given to the purchaser are "subject to the provisions of s. 45 of the Law of Property Act, 1925, respecting costs"; and in Condition 19 (1) that the vendor is not to be thereby discharged from the obligation to disclose liabilities affecting the property on or before the date of the *contract* (the word "sale" gives way to "contract").

Substantial alterations have been effected in Condition 21 with a view to clarifying the position of the parties in the light of *Re Forsey & Hollebone*, 1927, 2 Ch. 379; and the Town Planning Act, 1927. The general effect of those of the former kind is to throw upon the vendor, unless the property is expressly sold subject to some requirement made by a local authority or to any other local land charge of which he has notice, the obligation to keep the purchaser indemnified from all money payable in respect of that requirement or charge.

If, however, a town planning scheme or a resolution therefor is disclosed in the contract the indemnity is not to apply to any claim (e.g., in respect of the increase in value of premises consequent upon the passing of a town planning resolution affecting them) made under the Town Planning Act, 1925, s. 10 (3). The range of the condition is considerably extended by an amendment to sub-cl. (5). It now applies to notices by public utility companies (that expression is given the same meaning as in the Landlord and Tenant Act, 1927), gas, electric light or power or water authorities. A new sub-cl. (6)

protects the purchaser where a demolition order has been served on the vendor before the date of the contract. Unless the vendor before the date of the contract has given written notice of the order to the purchaser, the contract may be rescinded as if the order created an incumbrance.

A new sub-cl. (6) to Condition 22 binds the purchaser to disclose in the contract any order made under Pt. III of the Small Holdings &c. Act, 1908 (as amended) or to give the purchaser possession of the property within a year. Failing this, the purchaser may rescind the contract.

By sub-cl. (7) (formerly sub-cl. (6)) of the same condition, the vendor is obliged to idemnify the purchaser against claims under the Landlord and Tenant Act, 1927, as well as under the Agricultural Holdings Act, 1923.

Sub-clause (5) (providing for production of counsel's opinion, on sale of settled land) of Condition 25 of the original conditions, has been deleted; a note to the special conditions shows that this must be specifically provided for. The original sub-cl. (6), which now becomes sub-cl. (5), enables the purchaser to make title to settled land, subject to a family charge, where so authorised by s. 1 of the L.P. (Amend.) Act, 1926.

A new proviso to Condition 28 (1) clears up an ambiguous point, by making it obligatory upon the vendor to cancel, before completion, and at his own expense, the registration of a land charge in respect of any puisne mortgage affecting the property.

Provision is made in s. 32 (3) for the registration of a priority notice in respect of a restrictive covenant.

In Condition 34 (2) proviso, the period within which the documents of title are to be delivered to the last purchaser to complete is reduced from five years to one year.

An important change is made in sub-cl. (5) of the same condition for the words "granted after 1925" have been omitted. Hence acknowledgments and undertakings will henceforth extend to probates and letters of administration granted before 1926.

The expression "appurtenances" when used in the contract is defined to include (unless the context otherwise requires) the rights implied in a conveyance by virtue of L.P.A., 1925, s. 62; see *Re Peck & London School Board*, 1893, 2 Ch. 315.

Landlord and Tenant Notebook.

Keeping in Good Repair and Condition (Reasonable Wear and Tear Excepted).

In commenting on an article which appeared in the "Landlord and Tenant Notebook," in the issue of THE SOLICITORS' JOURNAL for the 22nd September, 1928 (72 SOL. J., p. 624), Mr. CLARKE (see *infra*, p. 682), appears to take the view that the principles laid down by the Divisional Court in *Haskell* v. *Marlow*, 44 T.L.R. 171 (a case which arose out of the construction of a will) with regard to the extent of an exception of reasonable wear and tear, in the case of a repairing covenant, would not apply as between landlord and tenant.

As far as I can gather from these comments the view taken there is that such an exception absolves the covenantor from liability in respect of *all* dilapidations caused by friction of air, by exposure and by ordinary use, and there is cited in support such cases as *Miller* v. *Burt*, 63 SOL. J. 117; *Terrell* v. *Murray*, 17 T.L.R. 570; *Jones* v. *Geen*, 1925, W.N. 45.

Now, both *Miller* v. *Burt* and *Terrell* v. *Murray* are dealt with in the judgments in *Haskell* v. *Marlow*.

With regard to *Miller* v. *Burt*, where the house was an old one and was in a bad state of repair at the commencement of the term, and where the covenant was to keep it in the same state of repair, fair wear and tear excepted, the court directed the arbitrator that if wind and weather had greater effect on the premises, having regard to their character, than if the premises had been sound, the tenant was not bound so to repair as to meet the extra effect of the dilapidations so caused.

But, as was pointed out in *Haskell* v. *Marlow*, this direction was "nothing more than a statement that in dealing with a covenant to keep old premises in the same state of repair as they were in at the date of the lease, the age of the premises and their condition at the beginning of the tenancy must be taken into consideration"; a matter which it would equally have been necessary to take into consideration even if there had been no exception of fair wear and tear at all. The formula in *Miller* v. *Burt*, therefore, cannot be regarded as throwing any light on the meaning of a fair wear and tear exception.

In *Terrell* v. *Murray*, 17 T.L.R. 570, the covenant was to deliver up at the end of the term in "as good repair and condition as it is now in, reasonable wear and tear excepted," and it was held that the tenant was not liable for three items of dilapidations, viz.: painting the outside woodwork, repointing the brickwork, and repairing parts of the kitchen floors which had become affected by dry rot, but again all that was decided in that case was, as the Divisional Court pointed out in *Haskell* v. *Marlow*, that "an exception of reasonable wear and tear is not to be regarded as mere surplusage, and that a proper meaning must be given to it, and that there was no liability [under such a covenant] to do outside painting."

As regards the case of *Jones* v. *Geen*, 1925, W.N. 46, which decided that the standard of repair required by a covenant to keep in good and tenantable repair (fair wear and tear excepted) was very different from that imposed on landlords by the Housing Acts to keep the premises fit for human habitation, this case has no bearing whatever, as far as I can see, on the extent of the exception of reasonable wear and tear.

In all such cases it is essential to determine two distinct questions, in order to measure the extent of the liability of the tenant under a fair wear and tear exception. First, it is necessary to ask whether any dilapidations have been caused *immediately* by the normal action of natural destructive agencies or by normal human user, and the unreported county court case cited by your correspondent with regard to the liability of a tenant for damage to walls by the removal of glasses, pictures and other articles attached by nails and other fastenings merely turns on the question whether such user is to be regarded as a normal human user of the premises. Secondly—and this is where the difficulty chiefly arises—it is necessary to ask the further question, viz., whether, assuming that such damage is the direct consequence of normal destructive agencies or human agency, any further damage indirectly resulting therefrom is such that could have reasonably been prevented by the tenant having regard to the terms of the covenant to repair, and all the circumstances of the case.

In other words the exception (of fair wear and tear) is not to be so construed as to relieve the tenant necessarily from the obligation to do such repairs as may be required to prevent a defect, originally proceeding from reasonable wear and tear, from producing other results which such wear and tear would not directly produce.

Our County Court Letter.

WORKMAN'S NEGLECT OF PRECAUTIONS.

IN the recent case of *Andrews* v. *Great Western Railway Company*, at Newton Abbot County Court, the facts were as follows: The applicant was holding in his hand a cold rivet, which another workman was snapping, when a piece of iron flew into the applicant's eye. Though there was a rule requiring goggles to be worn, the applicant's case was that this was not enforced, and that goggles were never worn even for dangerous work, such as cutting, chopping and hot riveting, as they became clouded with perspiration and steam and rendered work out of the question. On the other hand, cold riveting or holding-up was never regarded as dangerous, and

as the chance of flying chips from cold rivets was very small, protectors were never worn. The medical evidence was that the accident had resulted in permanent impairment of vision, which could be rectified by spectacles, but there was no guarantee against future complications. Corroborative evidence was given by four experienced boilersmiths and boilermakers as to the non-user of protectors, but H.M. Inspector of Factories stated for the respondents that the above operation was attended with great risk if no goggles were worn. The respondents' foreman boilermaker said that on many occasions he had told men to wear goggles, and he had spoken to the applicant on the matter before the accident. It was admitted, however, by a witness who was in charge of the workshop staff at Newton Abbot, that it was left to a workman's own discretion to decide whether the particular job he was doing was dangerous. His Honour Judge HIGGINS stated that the general opinion appeared to be that only a slight risk existed, and he therefore awarded £8 12s. 6d. compensation, with a declaration of liability in case of further injury developing, and costs on Scale B.

Under the Workmen's Compensation Act, 1925, s. 1 (1) (*b*), if it is proved that the injury is attributable to serious and wilful misconduct, any compensation claimed shall, unless the injury results in death or serious and permanent disablement, be disallowed. In *Reeks* v. *Kynoch Limited*, 18 T.L.R. 34, a boy of nineteen was working at a machine used for cutting screws, and he leaned over a circular saw while it was in motion in order to pick up an uncut screw which had fallen. In the result he sustained an injury to a finger, and took proceedings against the company on the ground that there was no provision of proper fencing to dangerous machinery. The defence was that the boy had often been told not to put his hand across the circular saw, and that the injury was attributable to his serious and wilful misconduct, but the county court judge made an award. The Court of Appeal refused to disturb the finding of fact, the Master of the Rolls stating that the *prima facie* inference was that the element of wilfulness did not enter at all into what the workman had done, but that his action was due to sudden impulse. A case in which a guard was provided, though the workman refused to use it, was *Brooker* v. *Warren*, 51 SOL. J. 171. The workman had worked for several years at circular saws before the invention of guards, to which he strongly objected, and he had ignored the warnings of the employer and the factory inspector of the risk to which he exposed himself and others. The danger was that the wood might be jerked up and hurled about the workshop, and on one occasion this actually happened and the workman was fatally injured. The county court judge held that by reason of the workman's opinions his action was not serious and wilful misconduct, and an award was therefore made. The Court of Appeal reversed this decision, and held that the employer had not consented to the guard not being used, and that neither the employer nor the factory inspector had receded from their attitude of disapproval.

A contrary decision was given in *Casey* v. *Humphries*, 57 SOL. J. 716, in which a girl bottler in a soda-water factory was injured by broken glass. The employer's case was that the accident was due to serious and wilful misconduct, as the girl had neglected to wear protective gauntlets as required by the rules posted up. The county court judge found that although gauntlets were provided, the forewoman never insisted on the applicant wearing them, but only told her to do so as a matter of form. An award was therefore made, and the Court of Appeal refused to disturb the finding that there was no serious and wilful misconduct.

Practice Notes.

INCREASE OF COSTS.

ON the 2nd October, at the Cornwall Quarter Sessions at Bodmin, Mr. W. H. Graham made an application on behalf of the Cornwall Law Society for a revision of the scale of costs. It was pointed out that certain counts, formerly taken as two cases, could now be included in one indictment, and the rule sometimes worked a little hardly and anomalies existed. The existing allowance was a fee of £3 10s. to counsel and solicitor where there were not more than four witnesses, and £5 10s. where there were five or more. It was proposed that the new scale should be: On each indictment where the solicitor was advocate, for the first count £5 5s.; for the second and third counts at the same sessions £2 12s. 6d. Where counsel were engaged, on the first count £3 5s. 6d. for counsel, and £2 12s. 6d. for the solicitor; on the second and third counts at the same sessions £2 4s. 6d. for counsel, and £2 2s. for the solicitor. Costs not to be allowed on more than one count arising from the same set of facts, and to be inclusive of all travelling and other out-of-pocket expenses. The chairman, Mr. G. T. PETHERICK, said that the Bench were satisfied of the fairness of the new scale, which was therefore approved.

PROTECTION OF SEED BUYERS.

THE magistrates at Upton-on-Severn recently dealt with a case under the Seeds Act, 1920, s. 4 (1), which empowers any person authorised by the Minister of Agriculture to enter certain premises and take samples of seeds to which the Act applies. The owner of the seeds is required to furnish a statement containing the required particulars, and under s. 8 any person who makes a false statement may be fined £5 for a first and £10 for a second or subsequent offence. The case for the prosecution was that the defendant had sold a fivepenny packet of Ailsa Craig onions to an inspector, who had divided the sample into two parts, handing one to the defendant and sending the other to the Cambridge seed testing station, in accordance with the above Act, s. 4 (2). The defendant had signed a declaration that the seeds were up to the prescribed minimum of germination, viz., 60 per cent., but the test showed a germination of 3 per cent. only. On a previous visit packets had been found bearing no declaration, but dated 1925, the defendant's explanation being that the seeds had been bought since August of last year, but were put into some unused old packets. On being tested these seeds were found to be practically worthless, the germination being 1 or 2 per cent. The defendant's evidence was that she bought her seed in small quantities from reputable firms, and retailed it in small packets, but that no sample had been left with her in accordance with the Act. The bench considered that there was no intent to defraud, but as a technical offence had been committed the defendant was fined 10s. It transpired during the case that the germination of seed deteriorates with age, and that the Act was passed at the request of the seed trade to protect potato growers and other buyers of seed.

ILLEGAL IMPORTATION OF WATCHES.

At Dover on Wednesday Yujiro Horikoski, a student of Nottingham University, was fined £43 12s. 6d. for illegally importing from Calais two gold watches, a pendant watch, a metal watch, a folding camera, and a pair of binoculars, with intent to defraud the Customs.

Mr. Creighton, Chief Preventive Officer of Customs at Dover, said Horikoski was given every opportunity to declare the goods, which had to be practically pulled from him.

Evidence was given that Horikoski said he would sign a declaration that the binoculars were bought in London, but on being searched, a pendant watch was found in his hip pocket and a wrist watch in a sleeve of his undervest, which was folded back and completely hidden from view. He then admitted that the camera and binoculars were purchased in Berlin.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Assent by Executors—Legacy Charged on Property Devised.

Q. 1439. A, by his will, bequeathed a pecuniary legacy of £100 to his son, B, and devised a freehold house to his son, C, and another freehold house to his son, D, "each for his own absolute use and benefit but charged with the said legacy of £100." C and D were appointed executors. At a later date B went abroad, and A then gave him £100, which he intended to be in substitution for the legacy. A then gave his solicitor instructions to prepare a fresh will, omitting the legacy. The will was prepared, but A did not call and sign it immediately, and he died without the second will having been signed. If necessary, conclusive evidence can be given to show that the gift was intended as a substitution for the legacy. It is assumed that the legacy was adeemed by the payment made in A's lifetime, and that C and D take the properties free from all charges in respect thereof. The executors do not wish to commence a correspondence with B if this can be avoided, and they propose to sign assents to the devise of one house to C and the other to D in the usual statutory form, and in both cases in fee simple, and rely upon s. 36 (7) of the Administration of Estates Act, 1925, to keep the title in order and answer any objection raised by subsequent purchasers. Will the above procedure be satisfactory? If not, what course should be taken by the executors?

A. Without offering any opinion as to whether the legacy was adeemed or satisfied by the gift (as to which it would be necessary to consider all the evidence) general agreement is given to the suggestion that assents by the executors would be sufficient in favour of purchasers from C and D, though in the hands of the latter themselves, and any volunteers under them the properties would be subject to the legacy to B if the latter established his claim to it, or rather, if C and D were unable to negative the claim by proof of satisfaction, s. 36 (9)).

Restrictive Covenants—Right to Enforce.

Q. 1440. A is the owner of a certain large piece of land upon which he carries on certain trades or businesses, having acquired the land for these purposes. A sells a small portion of the land to B, and the following restrictive covenant is contained in the conveyance to B: "And the purchasers for themselves and the survivors and survivor of them their his or her assigns owners or owner for the time being of the hereditaments hereby conveyed hereby covenant with the vendor that the purchasers will not use or permit to be used the hereditaments hereby conveyed or any building to be erected thereon as or for, etc." B has now sold the small strip of land to C, who threatens to carry on those trades or businesses prohibited by the covenant. The question is, can A (who still retains the ownership of the major portion of the land and still carries on the same trades or businesses thereon) enforce the covenant against C. It will be noted that the parties are A, the original covenantee, and C (the assignee from B), who purchased with notice of the covenant.

A. A can enforce the restrictive covenant against C, provided, either the covenant was entered into before 1st January, 1926, and C has notice actual or constructive of it, or, if entered into on or after that date, it was registered as a land charge before the conveyance from B to C.

Unfenced Forecourt—Whether Presumption of Dedication.

Q. 1441. A has occupied a house with a small frontage to a village street for some seventeen years and purchased the same from a brewery company and its mortgagees in 1924, the plan on the conveyance showing that the frontage was included therein. A has repaired this frontage (with cinders) and has from time to time stopped people who tried to walk across it as a short cut to an inn next door, there being no path across. He has recently put this frontage down to grass and fenced it in. He has now been requested by the district council to remove this fence upon the ground that the public have the right to use this frontage and upon the further ground that an ordnance sheet of 1909 shows it to be an open space (i.e., to be unfenced). According to the ordnance sheet this house was then an inn also.

(1) Does an unfenced frontage to an inn, after the lapse of years, necessarily become public property, or do the public acquire any rights therein? May not the members of the public using it be regarded as doing so for a particular purpose, namely, of going to the inn, and therefore be licensees only?

(2) In view of the fact that a limited company and its mortgagees held the property for thirty years, would not this negative any possible dedication during that time?

(3) In the above circumstances, would it, in your opinion, be held that there had at some time been a dedication, and that the general public had a right of way?

(4) Are there any decided cases which bear on these points?

(5) Would it make any difference if it were shown that this property and the inn next door had for many years belonged to the same owner?

A. (1) The land does not necessarily become public property. It is purely a question of intention to dedicate as a highway (*Robinson* v. *Cowpen Local Board*, 63 L.J. Q.B. 235).

(2) A limited company could dedicate as well as a private individual.

(3) The fact that the property was an inn would, if it had any bearing at all, be evidence against and not in favour of dedication. The ordnance map is not evidence of dedication. At best it could merely be used to show there was no front fence, which is admitted. The opinion is given that the probabilities are against dedication.

(4) *Corsellis* v. *L.C.C.*, 1908, 1 Ch. 13, and in court below, 1907, 1 Ch. 704, may be consulted.

(5) No, unless it is admitted that the land in front of the inn has been dedicated.

Cricket Club—Entertainment Tax—Licence.

Q. 1442. A town cricket club in one of the home counties rents a field, and plays in it, as the town cricket club, and sometimes permits its use for cricket to other teams from universities and elsewhere. Most of the club members reside in the town in which the club ground is situated, but some do not. A small fee is taken at the gate from non-member spectators, and better gate money is desired on unusual occasions of importance. The police say gate money is (1) unlawful, (2) would draw upon it the necessity of an entertainment tax and licence, (3) and on Sundays would be forbidden by the Lord's Day Observance Acts. Could you help me to authorities in elucidation of the above points, and any others involved in the position and nature of the case, which is one of wide interest?

A. We cannot understand the contention that the taking of gate money is unlawful. Taking gate money does, however, involve the obligation of paying the entertainment tax. If the club occupies a pavilion or other premises habitually, and intoxicating liquor is there supplied to members and

their guests, it requires to be registered: see s. 91 of the Licensing (Consolidation) Act, 1910. With regard to the point as to play on Sunday, it is true that by the old Act of Charles I (1 Charles I, c. 1) meetings, assemblies or concourse of people out of their own parishes on the Lord's Day for any sports and pastimes whatsoever is forbidden, the penalty for breach of this being 3s. 4d., to be employed for the poor of the parish; but we have not heard of this enactment having been enforced in modern cases.

Settled Land—Death of Tenant for Life—Form of Grant.

Q. 1443. A is the sole executor and only son and universal legatee of testatrix recently deceased. The net estate is worth about £120. Under her late husband's will, deceased was tenant for life of a small leasehold house worth about £500. She was also sole surviving trustee of the said will. On her death the house goes to A absolutely. It will be seen, therefore, that A is entitled to the whole of the settled and unsettled property and is also trustee of the settlement (as his mother's executor) and executor of his mother's will.

(1) In view of the decision in *Re Bridgett and Hayes' Contract*, 71 Sol. J. 910, must A apply for two separate grants to his mother's free estate and the settled house? Can he swear that there " is " no settled land?

(2) If two grants are necessary, can they be applied for concurrently, or must the general grant be applied for first? In other words, is A entitled to apply for a special grant to the settled house as trustee of the settlement until the court has confirmed his appointment as executor of the last surviving trustee?

(3) What is the exact procedure in regard to the Inland Revenue affidavit on applying for a special grant to settled land? In this case no duty is payable on the settled house because it is exempt under s. 14 of the Finance Act, 1914. Has a certificate of exemption from duty to be obtained from the Estate Duty Office and lodged at the Probate Registry with the special executor's oath? The Inland Revenue affidavit to deceased's own estate will be on Form B.2 (30s. fixed duty) and it will be sworn that no other property liable to duty passes on the death.

It is submitted that if the new legislation renders two grants necessary in a case like this, it should be amended as soon as possible.

A. (1) and (2). See answer to *Q.* 1413, p. 643 *ante*.

(3) The oath that no other property dutiable passes on the death should suffice, but for such a small matter submission to the requirements of the authorities, which no doubt they will state on application, will probably prove the most expeditious and least expensive course.

Will—Of Foreigner Domiciled in England—Formalities.

Q. 1444. A spinster and an American citizen by birth, resident in England for some years, intends to reside here permanently. She owns certain freehold property in this country, but has no real estate in the United States, deriving all her income from investments in America. She is entitled to a portion of her income (for life) under some American settlement, but this is derived from personal property, and she has also some investments of her own in that country, the income of which is remitted to her here from time to time. What formalities, if any, should be observed in preparing her will?

A. The residence and intention that it should be permanent, establish an English domicil. The English freeholds will pass under a will signed as such in accordance with the law of England, attested by two witnesses in the usual way. The succession in the American investments assumed here to be personal, must ultimately depend on the law or laws of the state in which arising, but all American laws in respect of movables or personal property give effect to a will valid in accordance with the law of the domicil. Probably the executor will have to obtain probate in America.

Settled Land—S.L.A. Trustees—Vesting Deed—Title on Sale.

Q. 1445. X, who died in 1879, appointed three persons to be the executors and trustees of his will, and devised to them all his real and leasehold estates upon trust to pay the net income thereof to his wife during her life, and after her death to his daughter during her life, with remainder to that daughter's children absolutely. The power of appointing a new trustee or new trustees of the will is thereby declared to be exercisable by the surviving or continuing trustees or trustee for the time being or the acting executors, etc., of the last surviving and continuing trustee. The will contains no trust for or power of sale. The will was proved by the three executors therein named. The testator's widow died in 1904, and his daughter now receives the income of the property. All the trustees appointed by the testator have died, the last, H, in 1907. No new trustees of the will have been appointed. H left a will appointing three executors, who duly proved same; two of these executors are still living. No deed vesting the settled property in the tenant for life has been executed. It is now desired to sell part of the property.

(1) Are the two surviving executors of H's will the trustees, for the purposes of S.L.A., 1925, of the settlement created by the original will, by virtue of s. 30 (3) of that Act?

(2) If not, can they appoint themselves to be such trustees, or must they appoint other persons?

(3) Presumably the S.L.A. trustees must execute a deed vesting the property in the tenant for life?

(4) Who will have the power of appointing new trustees of the settlement, and ought the vesting deed to designate the person or persons having that power?

(5) If the vesting deed includes land formerly copyhold, of which the manorial incidents have not been extinguished, must it be produced to the steward of the manor pursuant to L.P.A., 1922, s. 129?

A. (1) Yes; (2) does not arise; (3) they will execute a deed declaring the property to be vested in the tenant for life, see 3 Prid., p. 308, *et seq.*; (4) the power of appointing new trustees is exercisable by the trustees of the settlement; (5) the opinion here given is that the vesting having been effected by statute it is not necessary to produce the vesting deed to the steward. The text-books and precedents seem to be silent on the point. An assurance for the purpose of s. 129 would be an instrument transferring some interest; it is assumed that nothing is transferred by this vesting deed. Further, the penalty for non-production is the avoidance " of the grant or conveyance of a legal estate." This penalty would not affect a vesting deed which simply *declares* the legal estate to be vested in the tenant for life. Note that the definition of a conveyance in L.P.A., 1922, includes a vesting instrument (*ib.*, s. 188 (16)) which includes a " vesting deed " which for the purposes of that Act means " the instrument whereby the land is conveyed or vested "; contrast S.L.A., 1925, s. 117 (1) (xxxi).

Friendly Society—Winding-up.

Q. 1446. I am frequently asked to advise what steps can be taken by creditors (when there are no assets available for execution) in respect of goods supplied to working men's clubs and British Legion clubs. The furniture is generally protected by a bill of sale or hire-purchase agreement or there is rent owing to the landlord, so that the usual remedies are not available.

(1) Can a creditor take steps to wind up a working men's club registered under the Friendly Societies Act, 1896, and if so, what is the procedure?

(2) What is the procedure in the case of a British Legion club or other club not registered under the Friendly Societies

Act. Apparently, it would rest with the rules of each club, and a creditor could do nothing.

A. (1) A working man's club registered under the Friendly Societies Act, 1896, can be wound up under the Companies (Consolidation) Act, 1908, s. 268: see *In re Ironfounders (Bradford Branch) Social Club and Institute*, 1923, W.N.127.

(2) An unregistered friendly society consisting of more than seven members may be wound up under the above-mentioned section of the Act of 1908: see *In re Victoria Society, Knottingley*, 1913, 1 Ch. 167.

Woodlands—Basis of Assessment—R. & V. Act, 1925.

Q. 1447. The owner of Woodlands (Chestnut) cut for sale every ten years—has been assessed in respect thereof to a "general rate" levied by a rural district council on the full rateable value. This general rate is stated to be for the purposes of—

		s.	d.
(*a*) County Council in respect of general county, education, police and public libraries ..	@	4	10
(*b*) Guardians in respect of relief of the poor and other expenses	@	1	2½
(*c*) Area assessment committee	@	0	0½
(*d*) Rating authority in respect of highway and sanitary expenses, new valuation lists and housing	@	3	11
		10	0

Is the assessment in respect of items (*a*), (*c*) and (*d*) payable on the *full* rateable value, or should such assessment be made on one-fourth of the rateable value of the items referred to? There appears to be no definition of a general rate in "Halsbury's Laws of England," but if the general rate has the same meaning as general *district* rate it would appear that items (*a*) (*c*) and (*d*) are only payable on one-fourth of the rateable value.

A. The assessment in respect of all Woodlands is payable on the full rateable value, so far as all the items embodied in the general rate are concerned. There is no definition of a general rate in "Halsbury's Laws of England," as this is a new statutory term created by the Rating and Valuation Act, 1925, s. 2 (2), of which prescribes that as from the 1st April, 1927, the rating authority of each rural rating area (i.e., the rural district council) shall make and levy a general rate for the whole of the district—which is to be a rate at a uniform amount per £ on the rateable value of each hereditament in the rating area. Section 9 of the same Act empowers county councils, guardians and other precepting authorities to issue precepts for their expenditure, and these require the rating authority to levy what is necessary as part of the general rate or as an additional item of the general rate. See s. 9 (2) (*b*). So far as special rates in rural areas are concerned, these are only payable in respect of one-fourth part only of the rateable value of Woodlands (see s. 3 (2)), but general rates and such sums as are leviable as part of a general rate are clearly payable upon the full rateable value as determined under s. 22 of the above Act. As regards the basis of assessment, the value of land used for the growth of saleable underwood is to be estimated as if the land were let for such a purpose at a rent which a person would give for it who is to have the profits of the underwood when ready for cutting. See *R.* v. *Mirfield*, 1808, 10 East 219, and the Rating Act, 1874, s. 4. In the case of a plantation or wood which is not used for the growth of such underwood, the value is to be estimated as if the land were occupied in its natural and unimproved state, and, speaking generally, the amount of the assessment of woodlands should be comparatively small.

Correspondence.

Keeping in Good Repair and Condition (Reasonable Wear and Tear Excepted.)

Sir,—In the article headed "Landlord and Tenant Notebook," on p. 624 of your issue of 22nd September last, your contributor would seem to suggest that the decision of the court in *Haskell* v. *Marlow* is conclusive on the question of a tenant's liability to his landlord on an agreement to keep premises in good repair and condition, reasonable (or fair) wear and tear excepted, although the decision cited arose out of a will, and in the same article he states that there is no previous authority in which the effect of that exception has been fully considered.

I submit that the judge's remarks quoted in the article in question are *obiter dicta* so far as the general question of this liability is concerned, and with all respect, that the application of legal principles in the hypothetical example furnished by Mr. Justice Talbot is neither in accordance with previous decisions nor logical.

It is stated in Woodfall's "Landlord and Tenant," 1921 Ed., that this common exception excludes dilapidations caused by friction of air, by exposure and by ordinary use, and in the case of *Miller* v. *Burt*, reported in 63 Sol. J., p. 117, the divisional court agreed upon a formula for the guidance of the arbitrator, that while the tenant in that case was responsible for repairs necessary to maintain the premises in the same state as when he took them, fair wear and tear excepted, yet if wind and weather had a greater effect on the premises, having regard to their character, than if the premises had been sound, the tenant was not bound so to repair as to meet the extra effect of the dilapidations so caused. Personally I am unable, from the cases quoted in the above text book, including that of *Terrell* v. *Murray* mentioned by your contributor, to see how any logical distinction can be drawn between the two sets of consequences mentioned in Mr. Justice Talbot's example.

In the case of *Jones* v. *Geen*, reported in W.N. 1925, p. 45 (which was a case under the Housing of the Working Classes Act) the divisional court, on appeal from a county court, held that a covenant by the tenant to keep the premises in good and tenantable repair, fair wear and tear excepted, though on a very different standard from that imposed by the Housing of the Working Classes Acts on landlords to keep a house fit for human habitation, did impose some liability on the tenant, relieving to that extent the landlord from his liability. The divisional court differed from the county court judge who had held that the tenant's liability was not assessable and remitted the case to him to assess this liability on the facts.

In an unreported case which was contested in one of the Middlesex county courts some years ago the learned judge held upon the various decisions which were brought before his notice by counsel on both sides that an agreement to repair with these words of exception did not in fact impose upon the tenant any further liability than that he was not to make unfair use of the property. The tenant's liability was, if anything, somewhat less than the liability of a tenant under obligation not to commit waste, and the judge took as an instance in the case before him the attachment by the tenant of his pictures, looking glasses and other articles of furniture to walls by nails and other fastenings which he held to be within the tenant's fair use of the property and consequent freedom from liability, and that the action of the tenant in removing such fittings, leaving, by pulling away nails and other fastenings, holes in the walls, was not actionable, provided always that the articles were removed with reasonable care. Even if, notwithstanding reasonable care, yet owing to the nature of the house materials, some part of the wall would come away on the extraction of the nails or fastenings, the tenant was not to be responsible, as

this was fair wear and tear, but the tenant's action in pulling away fittings without such care was actionable, and involved him in assessable damages for the consequences.

According to my experience in practice of half a century and what I have heard from other practitioners acting both for landlords and tenants, the opinion of the county court judge last mentioned seems to be generally applied in practice, and moreover to be sound common sense.

London, E.C.4. PERCY CLARKE.
4th October.

[We thank our correspondent for his letter, the subject of which is considered in our "Landlord and Tenant Notebook," on p. 678.—ED., *Sol. J.*]

Obituary.

MR. E. HAWES.

Mr. Edward Hawes, M.A. (Oxon), Solicitor, senior partner of the firm of Hawes, Wood & Ware (now Hawes & Udall), of 7 Great Winchester Street, E.C.2, whose death occurred recently, had recollections that went very far back. His father died in 1841, and the son remembered hearing of the landing of Louis Philippe in England on the Revolution of 1848, visited the Great Exhibitions of 1851 and 1862, and in the latter year was one of the team that shot in the first rifle match of Oxford v. Cambridge. He was articled to Mr. Robert Cunliffe, afterwards a President of The Law Society, was admitted in 1865, and held separate commissions to administer oaths issued before the Judicature Act of 1875, and signed by Lord Romilly and judges of the Courts of Queen's Bench, Common Pleas and Exchequer. He cycled to within a few months of his death. Mr. Hawes was a member of The Law Society.

MR. CHARLES O'CONNOR, K.C.

The Right Hon. Charles O'Connor, K.C., the last Master of the Rolls in Ireland, passed away in London on Monday last, the 8th inst. He held that important office from 1912 to 1924—when it was abolished—and became one of the Judges of the Supreme Court of the Free State, retiring in May, 1925, when he took up his residence in London. Called to the Bar in 1878, he took silk in 1894, was appointed Sergeant-at-Law in 1907, Solicitor-General for Ireland in 1909, and Attorney-General two years later. He came into collision with the British military authorities during the troubles in Ireland by ordering the attendance in court of Sir Nevil Macready (the Commander-in-Chief) in connexion with a *habeas corpus* application. H.

Legal Parables.

XI.

The Solicitor Who Showed his Contempt.

ONCE upon a time a London solicitor, whose practice was mostly in the civil courts, was instructed to appear in a provincial police court. He had a great contempt for lay justices, to whom he always referred as the "Great Unpaid," no doubt because he considered it a low-class thing to do anything for nothing.

Well, this case was not a criminal case, and there was a good deal of civil law about it, as there so often is in police courts nowadays. So the London solicitor sat about teaching the justices a little law, and he talked right down to them and patronised them without trying to hide his contempt for their ignorance. And when the little old gentleman in the chair interposed once or twice the solicitor dealt with him very firmly, and as good as told him to leave the law to people who understood it, because though there was not much law in a county petty sessional court, they were up against some now, and so they had better listen and not talk—at least that is very nearly what he said.

So of course that soon stopped the old gentleman, and the London solicitor explained everything in quite simple language.

But when he had finished, the chairman began. And soon he warmed up to his work; he cited several cases from memory which knocked the bottom of the London solicitor's case clean out, made a few rather pointed remarks about ill-digested knowledge and superficial learning, all in a very quiet and courteous way, and decided against the London solicitor.

So the London solicitor was quite shaken, and he just murmured: "If your honour pleases." And the chairman only said: "Ah! This is not a county court." And the London solicitor asked a country solicitor in court, who had up to then been unworthy of his notice, "Who is that old blighter?"

And the country solicitor was very cheery about it all; and he said, "Oh, didn't you know him? That's Sir Blackstone Wiseman, who's just retired from the King's Bench."

Moral: London is best, after all.

Reviews.

The Journal of the Society of Public Teachers of Law, 1928. Edited by H. F. JOLOWICZ, M.A., LL.M. London: Butterworth & Co. (Publishers), Ltd. 68 pp. 3s. 6d.

The profession at large would do well to study this journal, for the welfare and prosperity of future members of the profession depend upon the ideals and methods of their teachers. The contest between the cultural and the vocational ideals in education is apparent in most of the articles and notes; but the manner in which the distinguished authors reconcile these ideals and work out methods for satisfying them, merits careful attention. The journal opens with an article by Dr. E. Leslie Burgin, on "The Education and Training of the Solicitor's Articled Clerk," which is of interest to parents, guardians and principals as well as tutors and professors. Mr. D. Hughes Parry follows with a practical-minded article on "Teachers of Law and the New Property Legislation," in which modern practice is proposed as an approach to the study of property law. Dr. Hazeltine's article on "Comparative Studies in the History of Civil Procedure" brings the reader back to the cultural ideal. This is balanced by an article on "Experiments with New Type Law Tests," by Professor Chas. E. Clark, of Yale, setting forth the objections to the essay type of examination and describing new "true-false" tests adopted in certain American institutions. Dr. H. Munch-Petersen's short but pithy article on "The System of Legal Education in Denmark," shows that in his country the tests are well designed to cover both sides of the training; while Dr. Hazel's admirable note on "The Oxford Law School" claims that a not unreasonable compromise between the two ideals has there been attained. Notes on the schools at Liverpool and Exeter are also worthy of attention in this respect. The editor is to be congratulated on this production.

Books Received.

Manual of the Law of Evidence for the use of Students. Being an abridgment of the author's larger treatise upon the same subject. By SIDNEY L. PHIPSON, M.A., of the Inner Temple, Barrister-at-Law. Fourth Edition. 1928. London: Sweet & Maxwell, Ltd. xliii and 308 pp. 12s. 6d. net.

Woodfall's Law of Landlord and Tenant, with a Full Collection of Precedents and Forms of Procedure. Twenty-second Edition. By AUBREY J. SPENCER, M.A., of Lincoln's Inn, Barrister-at-Law. 1928. London: Sweet & Maxwell, Ltd. cxlvi and 1,439 pp. £2 12s. 6d. net.

THE LAW SOCIETY AT EASTBOURNE.

ANNUAL PROVINCIAL MEETING.

[By Our Special Correspondent.]

The forty-fifth annual provincial meeting of The Law Society opened at Eastbourne on Tuesday, the 2nd inst., under the Presidency of Mr. R. M. Welsford, M.A., LL.B., and continued during the three succeeding days. The following members of the Council were amongst those who were in attendance, namely: Mr. W. H. Foster, LL.M. (Vice-President), Sir Robert W. Dibdin, Sir Roger Gregory, Sir C. H. Morton (Liverpool), Sir A. Copson Peake, LL.D. (Leeds), and Messrs. C. E. Barry (Bristol), E. H. Bird, H. R. Blaker (Henley-on-Thames), F. H. E. Branson, W. H. T. Brown, LL.B. (Liverpool), G. D. Colclough, B.A., LL.B., A. H. Coley, LL.D. (Birmingham), H. A. Dowson (Nottingham), B. H. Drake, C.B.E., R. Farmer (Chester), H. F. Foster (Aldershot), D. T. Garrett, B.A., Dennis Herbert, M.A., M.P., R. F. W. Holme, B.A., A. M. Ingledew (Cardiff), Chas. Mackintosh, LL.D., P. H. Martineau, B.A., C. G. May, Col. Alan F. Maclure, C.B. (Manchester), S. T. Maynard, T.D. (Brighton), W. E. Mortimer, M.A., F. A. Padmore (Manchester), R. A. Pinsent, M.A., LL.D. (Birmingham), G. Stanley Pott, B.A., Harry G. Pritchard, S. Saw, W. H. Scott, LL.B. (Gloucester), F. E. J. Smith, M.A., Walter M. Woodhouse, and E. R. Cook (Secretary).

Reception.

On Tuesday evening the members and their ladies were welcomed by the Mayor (Councillor Miss J. Hudson, J.P.) at the Devonshire Park Winter Gardens, during which the Eastbourne Municipal Orchestra played selections. Dancing took place subsequently to the strains of "Jenkie's Famous Band," refreshments being served in the Tea Room and Winter Garden.

Civic Welcome.

On Wednesday morning the Mayor (fully robed and accompanied by several Aldermen and the Town Clerk) in a charming speech formally welcomed the members to Eastbourne at the Town Hall, and was followed by the President of the Eastbourne Law Society (Mr. A. Chester Hillman, J.P.). The President returned thanks.

Presidential Address.

The President then read his opening address as follows: When faced with the problem of delivering an address I decided to touch on two subjects, one of which I hope will be of interest to my brethren of the profession, the other I hope of general interest.

These subjects are "holding companies" and "legal education."

The former touches upon the amalgamation of several businesses under one central control, the latter on the education of students in our branch of the profession, a subject in which I have taken considerable interest for some years.

I will deal first with "holding companies," a subject which attracts attention at the present moment, having regard to the number of amalgamations recently arranged, and the large amount of capital involved.

Holding Companies.

In recent years there has been a marked increase in the number of amalgamations of companies carrying on businesses of a similar nature. These amalgamations probably originated in the United States, where the big concerns connected with oil and steel are familiar examples. The aims of such amalgamations are numerous and include central control, with the consequent reduction of production costs and overhead charges, standardisation of output and prices, central selling and buying organisation, elimination of competition, etc. Considerable advantages to the public should follow on the achievement of such objects, though it may be questioned whether the elimination of competition is one; but disadvantages also arise, such as the possibility of monopoly, complexity of organisation, and unwieldiness. I do not propose, however, to discuss the economic advantages or disadvantages of amalgamation, as this, though of much interest, would be foreign to the matters to which I desire to refer.

Various terms are applied to these amalgamations, such as trusts, combines, parent or holding companies and their subsidiaries, but the main object is the same in all cases, viz., control with a view to increase of profit.

One method of amalgamation is by actual transfer to a new company of the undertakings of a group of existing companies carrying on distinct businesses, the existing companies going into voluntary liquidation and their shareholders receiving shares in the new company, as consideration for the transfer of their shares. This is no doubt the cleanest method, but before it can be adopted various points have to be considered, e.g., the possibility of shareholders dissenting and having to be paid out in cash under s. 192 of the Companies Act; the effect of winding up, as regards accelerating the due dates for payment of any perpetual or long term debenture issues carrying a low rate of interest; and possible damage to the goodwills of the amalgamating companies, resulting from their going into liquidation. Should this method be adopted, a true amalgamation is effected, and the new company becomes a trading concern carrying on all the businesses formerly carried on by the liquidated companies.

Another method frequently adopted is for one company (the "holding" company), either already in existence or formed for the purpose, to acquire, usually for shares in its own capital, all the shares of the amalgamating companies, or a number of shares sufficient to give it the voting control of all the amalgamating companies, which continue in existence and become "subsidiary" companies. The adoption of this method obviates the necessity for considering the points referred to above in the case where the undertakings are acquired. It does not, however, effect a true amalgamation, since the subsidiary companies continue as separate legal entities, and this may give rise to difficulties in working, to which I refer later.

The chief drawback to this last kind of amalgamation is that the continued existence of the subsidiary companies not only involves extra expense, but may preclude, or at least seriously affect, the working of the businesses of all the group companies as a single business. This is a difficulty which not infrequently arises in practice. For example, if there are several factories producing the same or similar articles, it may well be that, in the interests of the group as a whole, manufacture should be concentrated at one or more of them and the others closed down and disposed of. Under the first or true method of amalgamation this can be done without difficulty, since the one company owns all the factories and itself receives any benefits derived from the concentration of manufacture. But where the second method is adopted, the factories may be owned by different subsidiary companies, and the closing of the factory of Subsidiary "A" will cause a dead loss to that company, however much Subsidiaries "B" and "C" may benefit from their increased output. Similarly, in the interests of the group as a whole, it is obviously sound finance to employ any surplus funds of Subsidiary "A" in meeting the financial requirements of Subsidiary "B," instead of Subsidiary "B" borrowing from bankers or other third parties; but, as between Subsidiaries "A" and "B," such an operation, even if treated as a loan from "A" to "B," may be difficult to justify, so far as "A" is concerned.

It seems clear, therefore, that under amalgamations of the second class numerous descriptions of dealings with the properties and funds of the individual subsidiaries, which are conducive, if not essential, to the economic working of the businesses as an amalgamated whole, may be unjustifiable in law. In such a case outside members of the subsidiary companies, holders of either preference or ordinary shares and however few in number, have the right to apply to the court to restrain the subsidiary company from so applying its assets. Where, however, the whole of the issued shares of the subsidiary are held by the holding company the position is no doubt somewhat different, since creditors, as such, have no *locus standi* to take proceedings to restrain unauthorised dealings with a company's assets, their remedy, if they cannot obtain payment, being to present a winding up petition. Nevertheless, even in this case, were a subsidiary to be wound up and its assets to prove insufficient for payment of its debts, it is far from clear that its directors could not be held liable, in the winding up, for any loss occasioned to the subsidiary by anything done or concurred in by them whilst the subsidiary was a going concern, if such action or concurrence had the

effect of benefiting any other subsidiary of the group at the expense of their particular subsidiary company.

For the foregoing reasons the position of directors of subsidiary companies under amalgamations of the second class is obviously a difficult and unsatisfactory one. If, as they are generally expected to do, they merely carry out instructions received from the board of the holding company, without regard to the separate interests of their particular subsidiary, they are neglecting the duties required of them by law, as the directors of that company, and possibly incurring serious personal liability. If, on the other hand, they insist on exercising a genuine discretion in such matters, with due regard to the particular interests of their own subsidiary, they are told, as is quite possibly the fact, that they are defeating the whole object of the amalgamation. Thus sooner or later the friction engendered is such that they find themselves forced either to carry out their instructions and risk the liability involved by such action, or to resign office in favour of nominees of the holding company who are prepared to take their chance.

The alternative sometimes adopted with a view to obviating the foregoing difficulties is either to elect identical boards for the holding company and each of the subsidiary companies, or, where possible, to appoint the holding company itself director and manager of each subsidiary.

The first course has the advantage that, if the boards are identical, the directors, when acting as directors of a subsidiary, have before them the information necessary to form an opinion whether any particular inter-company transaction is justifiable in the interests of the subsidiary, whereas if the directors were not identical they might not have that information. If, therefore, in the interests of the group as a whole, they decide upon a transaction which cannot be justified as regards a particular subsidiary, they at least do so with their eyes open and have only themselves to blame if the transaction in question ultimately involves them in personal liability to minority shareholders or creditors of the subsidiary. This course does not, however, remove, but rather accentuates the conflict between the duties of the board as directors of a particular subsidiary and the interests of the group as a whole.

The second course very largely obviates the difficulties referred to, and, in my opinion, should, if possible, be adopted whenever a true amalgamation is for any reason not considered practicable. If the holding company itself can be appointed sole director and manager of each subsidiary (I emphasise the word "can," because the new Companies Act, when it comes into force, requires a public company registered after the commencement of the Act to have a minimum of two directors) no friction between the boards of different companies can arise, whilst the liability in respect of any dealings with the assets of a particular subsidiary, which may ultimately be held to be unauthorised, will *prima facie* be a liability of the holding company itself, and of that company only, and not of its individual directors; if so, the directors can, on all questions of inter-company dealings, safely have regard solely to what they consider to be the interests of the group as a whole, subject only to the risk, which is probably slight, of some minority shareholder in a subsidiary applying for and obtaining an injunction to restrain the carrying out of any dealing which he can prove to be detrimental to the interests of the subsidiary. If this alternative is adopted, the practical management of the businesses of the different subsidiaries will, no doubt, be entrusted to managers or sub-managers appointed and paid by the holding company. Such persons should, in my view, be employees of the holding company and responsible solely to it, and not to the subsidiary companies. I may mention that there is no legal objection to a company being appointed director of another company, if this is authorised by the latter's articles. (*Re Bulawayo Market and Offices Company*, 1907, 2 Ch. 458).

An ideal board of a holding company would, I suggest, comprise the following persons:—

A sound business man, preferably unconnected with any subsidiary.

A man of finance, similarly unconnected.

A representative of each subsidiary company, who before the amalgamation had held office as managing director or manager of that company and is fully acquainted with its business.

A holding company, with a board thus constituted, appointed sole director and manager of each subsidiary company, would have complete control over the combined and separate operations of the subsidiaries, and through the separate representative of each subsidiary would have the advantage of intimate knowledge as to the probable effect of any particular operation on the group as a whole and on each subsidiary.

Turning to the question of accounts—this, in cases of amalgamation under the first method, is simple, but under the second method is one of considerable complexity. It is desirable that the financial years of the subsidiary companies should coincide with the financial year of the holding company. Such an arrangement enables the accounts of the holding company to show the profits or losses of the subsidiary companies for the accounting period of the holding company.

The question of the form of the accounts of holding companies was discussed before the committee appointed by the Board of Trade in 1925 to consider and report what alterations were desirable in the Companies Acts 1908 to 1917. The committee reported that complaints had been heard from shareholders in such companies that the information given to them was unintelligible without further details as to the position of the subsidiary companies. The committee, however, did not endorse the view taken by some witnesses that the publication of a consolidated or combined balance sheet for the whole group of companies should be made compulsory, considering that, as many holding companies had adopted the practice already, it should be left to the shareholders to make such requirements as to the form of their company's accounts as they might think proper.

The committee pointed out that there was nothing in law to prevent a holding company from using a dividend received from a profit-making subsidiary company without taking into account losses suffered by other subsidiaries, the effect of which might be that the holding company was paying a dividend at a time when the group as a whole was in debit on the year's working. They did not think that any case had been made for prohibiting the practice, though they considered that shareholders were entitled to know whether the dividends proposed to be declared by the holding company were justified by the results of the group as a whole.

The committee accordingly recommended that a certificate signed by the same persons as sign the balance sheet should be appended to the balance sheet of the holding company, and filed with it, stating how the aggregate profits and losses of any subsidiary company or companies, during the period covered by the accounts presented, had been dealt with in the accounts of the holding company.

This recommendation has been embodied in the Companies Act, 1928, with the addition of a requirement of particulars of how and to what extent—

(i) provision has been made for the losses of any subsidiary company either in the accounts of that company or of the holding company, or both; and

(ii) losses of any subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of that company as disclosed in its accounts.

It is likely, therefore, that there will be a certain amount of expansion in the balance sheets of holding companies. Chartered accountants will tell you that there are various ways in which the balance sheet of a holding company may be presented. Sir Gilbert Garnsey, K.B.E., F.C.A., whose name needs no introduction, deals fully with each method in his book published in 1923 entitled "Holding Companies and their Published Accounts." I gather that the method of presentation which has advantages over any other is the publication of the balance sheet and profit and loss account of the holding company, showing the interest in subsidiary companies as an investment; presenting simultaneously, as a separate statement, either a consolidated balance sheet of the whole group of companies, or a summary of the assets and liabilities of all the subsidiary companies taken together. I understand from Sir Gilbert that such statements could be drawn up in such a manner that they would comply with all the requirements of the 1928 Act, and I venture to think that the presentation of information on these lines will be welcome to shareholders of holding companies.

Legal Education.

The progress made in legal education since the early years of the nineteenth century is remarkable. I well remember as a boy hearing from a solicitor, then over eighty years of age and retired, that legal education and examinations were unknown in his young days. After serving as an articled clerk for the term of five years he was taken by his master to the Master of the Rolls. The Master of the Rolls, upon learning that his service had been satisfactory, inquired whether the practice of the law was to his taste, and, merely urging him to maintain the high traditions of his profession, straightway admitted him as a solicitor. Whatever knowledge of law an articled clerk obtained in those days rested on his individual exertions, with the assistance of any crumbs of information dropped by his master, or gathered in the routine of an office.

When one thinks of the masses of Law Reports and of Statutes which have come into existence since the beginning of the last century, even though many are out of date and now

only of historical interest, a strong feeling of sympathy arises for the unfortunate student of to-day who is supposed to know the law, the whole law, and something besides the law.

LEGAL EDUCATION BY THE SOCIETY.

The President summarised the growth of legal education as shown by the records of The Law Society and then proceeded:

COURSE OF STUDY BEFORE ARTICLES.

It is not generally known, or at any rate not so generally known as it should be, that it is open to a student to take a course of legal study for one year before being articled to a solicitor. If he passes the prescribed examinations he can be admitted and enrolled as a solicitor after serving under articles for four years only, instead of the normal period of five years. Provision for this is made at The Law Society's School and the five Northern Group Universities by what is termed an exemption order under s. 3 of the Solicitors Act, 1922.

I wish to impress on all the members of the profession, on parents, and on schoolmasters, to whom parents often appeal for advice, the importance of a boy taking, before articles, the course of study for one year to which I have just referred. It will give him a good grounding in principles, the practice of which he will find in his master's office; he will start with a grip on the right end of the stick, and will be able on entering an office to take an intelligent interest in what is going on, instead of groping through his work like a blind man.

Another advantage is that a student, who has not definitely decided on a solicitor's profession, obtains knowledge of the elements of law before he becomes to a final decision, a knowledge which will be of service to him in any career, while, if he decides not to enter the profession, he will have saved £80 stamp duty on his articles, and possibly the payment of a premium.

A student taking this course is exempt from taking the course of study required by s. 2 of the Act of 1922, and is saved the interference with office work and expense of travelling to lectures and classes, which may be an important consideration in the case of a student who proposes to be articled in the country.

I wish to refer to the student who is articled for the full period of five years. He has not had the advantage of attending a course under the exemption order of which I have just been speaking. He comes into an office raw and wondering what law is and why such a bother is made about it. Obviously the best plan is for him to begin at once attendance at The Law Society's School, or some other school approved by The Law Society, and prepare for his intermediate examination. After an experience of office work and of articled clerks for over forty years, I am satisfied that the sooner this study begins the better.

As soon as the intermediate examination is passed the student should begin to prepare for the final. Let him spread the course of instruction over two years, and, with a reasonable amount of private study, the final will not have for him the terrors which haunt the student who has unwisely postponed his reading until the last year or even less.

Any student who may chance to read these remarks will perhaps acclaim me for the expression of sympathy in connection with the amount of law he is supposed to know, but I fear that he will turn and rend me if he reads what I am now about to say. The ordinary student reads practically nothing outside the subjects in which he is examined. Those subjects are purely legal. In my view the range of subjects should be extended so as to increase his working capital as a lawyer. As part of that extension I would include some acquaintance with legal and commercial French and German. I would require a much higher standard of general knowledge, and especially of history. Trevelyan's "History of England" and "The Book of English Law" by Professor Jenks should be standard works, and I would make a paper on these a feature of the final examination. There is no profession or occupation which enters into other people's business to anything like the same extent as does the solicitors' profession, and, be it remembered, such entry is at the request of "other people." It may be said that there is hardly a business transaction of any magnitude which is carried through in this country without the aid of a solicitor in some shape or form. To meet such a demand, no store of information can be too great.

It is a good sign that the honours examination, which, of course, is voluntary, is so popular. On the examination in June last fifty awards of honours were made. There being about 600 recruits to the profession every year, and three examinations for purposes of admission, it requires only a simple calculation to find that, on these figures, one student out of every four receives an honours certificate.

I feel, however, very strongly that *the standard of knowledge should be raised and should include modern languages. Especially do I urge the latter.* If a certificate included "Distinction in languages" it would be an important item in assessing a student's market value.

RELATION OF LEGAL EDUCATION TO PRACTICE.

There are still not a few practitioners who are inclined to under-estimate the value of a scientific study of law, and to regard law as a subject to be learned mainly for examination purposes; on the other side there are teachers who fail to connect the study of law with its practice, and treat it exclusively as a branch of academic learning. I do not think either view commends itself to the majority of our members. The growth of law departments in our provincial Universities, mainly filled with articled clerk students and to a great measure aided financially by this Society, is providing a result worth noting. Teachers of law are more ready to appreciate that their science (for law is a science, albeit an inexact one) is applied by their pupils to practical ends. The problems of the professional student differ from those of the undergraduate at Oxford and Cambridge. The barrier between the theorist and the practitioner is breaking down (on both sides), with good results. There is no reason why there should be a great gulf between theory and practice as has been the tendency in the past, to a greater extent (I believe) in law than in the medical profession. I venture to hope that this reconciliation of learning and professional technique will continue, to the mutual gain of the practitioner and the professor.

A PROFESSIONAL LAW SCHOOL.

In the statement presented in 1910 to the Royal Commission on University Education in London on behalf of The Law Society, there is a section dealing with a national school of law. In this statement is recorded the part played by the Society in the "seventies" in endeavouring to establish a school of law in London in connection with the education of solicitors and barristers. Despite the active support of Lord Selborne, bills introduced in four successive years failed to achieve this object. Lord Finlay's more ambitious scheme in 1904, while he was Attorney-General, was also supported by the Society. This project failed because it did not obtain the unanimous adherence of the Inns of Court. But in 1905 the Council of The Law Society passed resolutions regretting the impediments which had occurred, and pledging itself to use every means in its power to assist the Attorney-General in establishing a school of law, adequate for the needs of both branches of the profession and of the community at large, and to contribute towards the maintenance of such a school when established.

So long as the admission to the profession rests, as I think it must, on the passing of examinations conducted by the Society, amalgamation with the University of London is impossible. Therefore the only solution of the difficulty is the formation of a professional school of law in London. This, in my opinion, is long overdue.

While I do not advocate the fusion of the two branches of the profession, I am a firm believer in a system of education common to both. There can be no difficulty in drawing up a curriculum adapted to the requirements of both articled clerks and bar students, and I see little reason for differentiating between students of either branch of the profession. Such a school should cater (i) at the intermediate stage for the non-university student who needs a general grounding in the principles of law, and (ii) in the final stage for all students, whether or not they have passed through a university. For the latter class only a practical bias to the teaching is needed. It seems to me a defect in our Society's regulations that the young articled clerk at the intermediate stage is expected to pass an examination which covers the whole field of English law. He should confine his studies to learning the principles of the common law and property law, leaving the more detailed test for his final qualification.

I should like to see the bar and the solicitor's profession combining to achieve these objects. A joint school would make for economy of teaching power. This is an important consideration, as there is only a very limited number of persons willing and qualified to teach law. Such a school would relieve congestion at the Society's Hall, and reduce the present overcrowding at the Temple by rendering available for chambers the rooms now used for lectures and classes. Were it possible to house the school on the site of one of the old Inns of Chancery, it would be in congenial surroundings.

From the point of view of securing a high standard of efficiency from entrants to either branch of the profession, it is difficult to see any objection to such a school as I have outlined. Certainly the would-be solicitor of to-day is required to attain a standard of legal knowledge as high or even higher than that required for call to the bar.

The Inns of Court, in the past, have felt unable to give unanimous adhesion to the proposal for a great professional law school in London. Nor has this Society until recently been in a position to contribute adequately to the inevitably large cost. To-day we at all events continue to support the project as we have done for nearly sixty years, and we are happily in a position to offer adequate financial support. It may not be inopportune to suggest that the time has come for us to take the initiative; to point out our achievements in the field of legal education during this century; and to invite the Inns of Court to re-consider the proposal.

In conclusion, I wish to express my indebtedness to Mr. Wade for the materials and information which he has so kindly furnished to me for these notes. I should also like to place on record my appreciation of the valuable services which he has rendered to the Society's school during the period of his principalship.

The President of the Liverpool Law Society (Mr. W. H. T. Brown, LL.B.) moved and the President of the Manchester Law Society (Mr. J. A. Grundy) seconded a vote of thanks to the President for his address, which was carried with applause.

The State and Endowed Charities.

Mr. H. F. Brown, LL.B. (Chester) read a paper in which after suggesting that the time had arrived for continuing the movement for reform commenced by Lord Brougham, said:—

The first step towards reform, which, of course, will require legislation, is to declare that certain forms of charitable endowment, of which money doles are the outstanding example, are illegal, and that as regards other forms of endowment the first consideration shall be the public benefit.

Although some recent cases may appear to go as far as this (see *In re Hummeltenberg*, 1923, 1 Ch. 237); yet, without legislation, it is difficult for the Court of Chancery to free itself from a mass of old decisions which bind it to accept as charitable, endowments that would to-day be regarded as undesirable (*In re Weir Hospital*, 1910, 2 Ch. 124), and, when the original trusts have failed, to frame new schemes under the *Cy près* rule, so as to provide for the application of the income of the charity to purposes as similar as is practicable to the original objects.

Schemes made by the Charity Commissioners are subject to the same limitations.

The time at my disposal does not admit of my giving detailed examples of the need for the revision of charitable endowments. It is sufficient to say that even the most prudent and farseeing founder of a century ago could never have anticipated, and provided for, the social developments of the present day.

There are those who would have us believe that there is something impious in tampering with the charitable dispositions of the dead, but the State which confers the right to make such dispositions has always reserved to itself power to control or modify them or to appropriate for other purposes the whole or part of the endowments. It is not necessary to go back to the Reformation for examples; sufficient are provided by the nineteenth and twentieth centuries, notably the great reforms of the Universities of Oxford and Cambridge beginning in 1854.

By the Endowed Schools Act 1869, the income of an endowed charity applicable for doles, marriage portions, redemption of captives, relief of poor prisoners for debt, loans, apprenticeship fees, advancement in life, or for purposes which have failed altogether or have become insignificant in comparison with the endowment, if originally given for charitable uses in or before the year 1800, may be devoted to educational purposes.

The Allotments Extension Act 1882 authorised the letting as allotments of land held for the benefit of the poor, if the existing trust was for the payment of doles.

Under the powers of the London Parochial Charities Act 1883, a drastic revision of the London Parochial Charities was carried out by the Charity Commissioners. This Act might form a precedent for legislation leading to a general revision of endowments. It provided that the Commissioners should have power to exercise, without application, any of the powers vested in them by the Charitable Trusts Act 1853, and the Acts amending the same, thereby conferring on them power to make new schemes on their own initiative.

The Charitable Trusts Act 1914 provides that schemes may be made extending the area of a charity restricted to a municipal borough or to any parish or defined area therein, and if such charity is a dole charity, then its funds shall be applicable for the relief of distress or sickness or for improving, by such means as may be provided in the scheme, the physical, social or moral condition of the poor in the area as extended.

In addition to the before-mentioned Public Acts there have been numerous private Acts altering the terms of the original foundation, or confirming schemes of the Charity Commissioners made in excess of the powers conferred on them by the Charitable Trusts Acts; in particular schemes modifying, in a manner absolutely contrary to the founder's intentions, the doctrines attached to certain Nonconformist endowments. Similarly in the year 1912 a fund recently given by a testator for the purpose of a museum, was appropriated for a town hall, and in the following year £5,000 was taken from a charity founded in the sixteenth century for the benefit of "the poorer sort of cloth workers," and given to the London City and Guilds Engineering College.

It will be seen that the legislature has evinced little consideration for the intentions of founders in particular cases, and when the Charity Commissioners have had an opportunity of applying the *Cy près* doctrine they have followed suit. For example, a charity, of which, under a recent scheme of the Commissioners, the income is applicable for the objects of the Local Council of Social Welfare, for education, convalescent treatment, open spaces, advancement in life and emigration, was established thirty-five years ago for the purpose of a soup kitchen!

We observe that there is no lack of precedent for adapting charitable endowments to the requirements of the day, without reference to the original foundation. Is it not time, therefore, for legislation of a general character under which the position of all endowed charities should be reviewed from time to time, and those that are not in accordance with the requirements of the day be adapted to them. In doing this we should often approach far more closely to the intention of the founders than by a blind adherence to the letter of the foundation. In preserving the letter the spirit has often been lost. The great majority of founders have been actuated by a sincere desire for the good of their fellow men and made regulations intended to serve that end. It is not their fault but ours when their well-intended benefactions have, by reason of changes that they could not foresee, failed in their purpose, and become a curse instead of a blessing. Henry Smith, Alderman of the City of London, was probably a shrewd business man. He is now regarded as a public nuisance. Between 1620-1627 he made certain moderate benefactions, well conceived according to the knowledge of his day, for the benefit of the poor and of his own poor relations. His charity has become one of the scandals of endowment. The Charity Commissioners have said that it ought to be declared illegal and the endowment taken for some useful national purpose. But can it be supposed that we are carrying out the founders' intentions when we allow either £6,000 a year to be competed for by a greedy crowd of so-called relations, not one of whom is nearer than the seventh generation; or an annual distribution in 209 different parishes of 23,000 money doles. Or is it to be supposed that the rich burgher of the sixteenth century who endeavoured to help his poorer brethren, would have been charitably disposed to the freemen of the twentieth century, who now enjoy his bounty. The freemen on whom the benefactions were originally conferred were the citizens of the ancient boroughs. They possessed great privileges, but they had also onerous and expensive duties. Contributions to the town's expenses; watch and ward; military service in the town's defence, were familiar incidents of their daily life. No doubt these pressed hardly on the poorer burghers, and what more natural than that the richer ones should help them. But what moral right has the freeman of to-day to monopolise these old endowments? He performs no public service not performed by the ordinary citizen, but both the Municipal Corporations Act, 1835, and that of 1882, declared his right to the charities. We may assume that this was not unconnected with the fact that the Reform Act of 1832 also declared his right to the Parliamentary vote. But, as the Charity Commissioners remark, these charities "exhibit the anomaly of a body of recipients being continued for the sake of the charity instead of the charity for the sake of the recipients," and in no way do they carry out their founders' intentions.

When the question of the reform of charitable endowments is being considered, regard should be paid to the schemes of great philanthropists such as Andrew Carnegie and J. D. Rockefeller, men who have made endowments running into tens of millions of pounds, fully alive to their responsibilities and calling to their aid the best advice procurable. The first thing noticeable is that the term "for ever" so common in old foundations does not occur at all. They express their acceptance of the fact that the conditions of the earth inevitably change, and provide accordingly. Free from hampering restrictions, their foundations are adapted to the changing needs of future generations. The Rockefeller foundations are chiefly directed to medical research and public health. Andrew Carnegie's basic idea was "The improvement of the well-being of the masses of the people." Subject to this he gave his trustees full authority to change policy or causes when this, in their opinion, has become necessary or desirable,

The policy of the trustees, at the present time, is to make accessible to the public at large the cultural resources of the community, and especially to finance carefully-devised pioneer experiments for which, without practical demonstration, State subsidies and private liberality, cannot be expected. I am glad to see that they recognise the value of open spaces. A few national parks embracing the playgrounds and some of the beauty spots of our land should compensate us for the loss of a good many doles, and blankets, and sacks of coal.

But however much we may agree that a reform of our endowed charities is called for, it will be necessary to proceed very cautiously. Many vested interests, some legitimate and some not, have grown up around old foundations, and will offer resolute resistance to reform lest it should prove prejudicial to themselves. Nor can much help be expected from those who are engaged in the administration of endowed charities. A particular method of administration has become customary, the older trustees have grown familiar with it, and the newcomers find a certain state of things which they accept. Reformers are unpopular and the public interest, in the end, proves weaker than the private.

What then should be the legislation advocated? I suggest that, after altering the general law as previously mentioned, it should be declared that the power of making schemes already vested in the Court of Chancery and the Charity Commissioners should be extended so that, in the words of the Commissioners, "tribunals having power to establish schemes should be at liberty to take into consideration the propriety of effecting the modification of any provision of the original trust which by reason of lapse of time or change of circumstances shall appear to be no longer calculated to promote the substantial object of the foundation." that is on their own initiative and without any application from the trustees. If the modifications required are such that the charity would be unrecognisable by the founder, the endowments should, with due regard to existing vested interests, become part of a National Consolidated Endowments Fund to be administered for charitable purposes on the lines indicated by the Carnegie Foundations. The doctrine of *Cy près*, though a natural corollary to the doctrine of the sanctity of a founder's wishes, has been carried to absurd lengths, and it appears to me more reasonable to assume a general charitable intention on the part of a founder, if his original intentions fail, than, specifically, to appropriate his fund to purposes he can never have contemplated.

With certain rules laid down for their guidance in revising charitable foundations the Charity Commissioners seem to be the body best fitted to undertake the work. The London Parochial Charities Act, 1883, forms a good precedent. There should be an appeal from the Commissioners to the court as at present. I will state shortly other matters calling for reform:—

(*a*) All endowed charities should be under the obligation of registering with the Commissioners and the obligation, as well as that of rendering accounts, should be enforceable in a summary manner;

(*b*) The Commissioners should have power to consolidate charities. Lord Brougham's Commissions proved that out of 28,880 endowed charities 13,331 had incomes less than £5, and that nearly 6,000 had incomes less than £1;

(*c*) The accounts of endowed charities should be made out in a simple standardised form and be open for inspection locally;

(*d*) The Commissioners should have power to make an audit of a charity's accounts at their discretion;

(*e*) The administration of charities should be in the hands of properly appointed trustees as heretofore, but the trustees of the Consolidated Endowments Fund should be a specially selected body having experience of social work, and capable of originating and carrying through far-reaching experiments in social improvement.

Though, as I have said, the reform of existing foundations must proceed cautiously, new foundations may be treated with greater freedom, and I hold it to be a sound principle that, as regards them, there should be a right of rejection. The State should not be bound to take whatever is offered to it. It should have the right of deciding whether the particular character that the founder has given to his endowment shall take effect, or whether the endowment shall be appropriated to some other charitable purpose, or be included in the Consolidated Endowments Fund I have mentioned. A certain deference should be paid to the founder's wishes, at any rate for a definite period—say his life and twenty-one years afterwards—but they should never be allowed to interfere with the public welfare. Rejected endowments should be treated as endowments the purpose of which has failed, and they should fall into the Consolidated Endowments Fund. The alternative of treating them as cases of intestacy would, I am satisfied, not, as a rule, be in accord with the wishes of the founder. He has an urge towards charity and none towards his next of kin. If, however, he so wishes, he can give his benevolence a new direction in the event of the first direction being rejected.

It may be said that if charitable endowments are to be interfered with they will not be made. Much the same thing was said when the Charity Commissioners were constituted in the year 1853, but so far as can be judged, the intervention of the Commissioners has tended to increase the aggregate of charitable endowments. During the years 1918-1927, the investments in the custody of the Official Trustee of Charitable Funds increased from £40,930,233 to £70,190,218. The capital is growing at the rate of two to three million pounds a year. In the year 1927 there were 49,219 separate accounts and the income was £2,430,880. This does not take into account real estate, nor the endowed charities that have not come under the cognisance of the Commissioners. It does not appear, therefore, that the supervision of the Commissioners has proved anything but an incentive to founders, who have an assurance that their endowments will, at any rate, not suffer misappropriation, but be honestly administered and be applied for some beneficial purpose. To enlightened founders the example of the Carnegie and Rockefeller Foundations will appeal, and they will only be too glad to know that a means will be provided whereby their endowments will be applied to the best advantage in future ages and in circumstances they could not possibly have foreseen. If founders who wish to impose frivolous or vexatious conditions more calculated to flatter their own vanity than to benefit the recipients are deterred, so much the better.

The concluding note of Mr. Brown's interesting paper was that, following the lead given by Mr. Gladstone (as Chancellor of the Exchequer) in 1863, charities should bear their proper share of taxation.

Decrease in the Cost of Litigation.

Mr. H. W. Chandler (Basingstoke) submitted the following paper:—

An unbelieving generation finds it difficult to understand that lawyers can honestly be desirous of cheapening litigation. It is but few who know the truth which is that the desire of one's client to embark on litigation is always an anxiety and sometimes a nightmare.

For many years the county court has exercised jurisdiction in cases up to £50. Elaborate regulations were passed to prevent plaintiffs from recovering in the High Court any costs in cases under £20, and, in cases between £20 and £50, more costs than they would have obtained in the county court. Nevertheless, plaintiffs have shown a strange preference for the High Court, which an ingenious interpretation of the rules by masters and registrars has much assisted. The pursuit of costs is not always, or even generally, the reason for the preference shown. The High Court requirements are simpler the plaintiff can serve his own process, and the procedure is more expeditious. Now that county court jurisdiction has been extended to £100, the overlapping is an anachronism, and the remedy is obvious. The county court, with its huge output of rules and amendments of rules, should go; its high scale of official fees should be drastically cut. The High Court scale of costs would of course be amended. The scale in respect of undefended claims should be on an entirely different basis to that applicable to contested matters. In the latter, the question of costs should depend not on the amount at issue, but on the difficulty and responsibility involved. In all cases involving the construction of an abstruse Act of Parliament, the court should be empowered to order the payment of the whole or part of the costs out of State funds.

Every county court should become a district registry of the High Court, and every district registry should have bankruptcy jurisdiction. The county court judges should become district judges of the High Court. Some would in due course be translated to London.

Gone for ever would be the exasperating questions, in starting a county court action, as to where the letter was posted, where it was received, and whether the defendant was a duke or a dustman. The engaging simplicity of the High Court rule that a plaintiff can issue his writ at the central office or in any district registry he pleases would be universal. To a writ for a liquidated debt would be attached typed copies of any letters admitting the debt. My readers will point out the injustice of summoning a man in a district in which he does not reside and in which he did not contract. I propose no such anomaly. On the contrary, I would extend the existing High Court facilities and allow the defendant also to appear at central office, or in any district registry he pleased. If he did not appear, or appeared and admitted the whole or part of the claim, the plaintiff would be at liberty to sign judgment.

Non-appearance in the county court does not now, on an ordinary summons, relieve the plaintiff of the burden of attending court and proving his debt. The present simplicity of the High Court practice dispensing with such proof should be adopted. In all cases under £20, the registrar of the court of appearance should have a discretion to order payment by instalments as at present.

With regard to the claim or part claim in respect of which the defendant raised a plausible defence, the registrar would put him on oath, examine any documents he produced and give or refuse provisional leave to defend, with or without conditions. If such leave were given, the plaintiff would be at liberty immediately to issue a summons for directions, and at this stage occurs a real opportunity to save expense. High Court judges have caustically remarked that an affidavit of documents often discloses all documents except the one or two which really matter. It is suggested that the summons for directions should direct production of documents by each party on a stated day prior to the hearing. Each party should attend the hearing and submit himself to examination as to documents which he had not produced, and submit himself to just that amount of examination as would show the bona fides or the hollowness of his defence to claim or counter-claim. Nothing of the nature of cross-examination should be allowed. The registrar would be at liberty to make any order which can now be made under Ord. XIV.

The advantage of hearing the parties at this early stage, instead of reading their affidavits, would be inestimable and the process would put an end to that studied concealment which often underlies evidence by affidavit. At the same hearing, each party should be asked to admit facts which are not vital to the real issue, and be warned that failure to do so may result in his having to pay costs of formal proof thereof, even if successful. The registrar would also, in respect of the issues remaining to be contested, indicate the maximum sum which might be spent on advocacy and expert evidence. This indication, although not binding on the taxing master, would be a check to those litigants who run after fashionable counsel, when less prominent men of equal ability would well serve their purpose at lower fees. Counsel's exclusive right of audience in cases over £100 would not be affected, but, in cases below £100, the scale fee to the advocate should no longer draw the invidious distinction between counsel and solicitor which is now an inducement to brief counsel in cases where their aid is unnecessary.

By extending the use of the summons for directions as above suggested, the expense of summons under Ord. XIV with affidavits in support and in reply, of the notices to admit and produce documents, of the affidavits of documents, of the notices to admit facts and replies thereto and of interrogatories and replies thereto, should in the great majority of cases disappear.

In all cases in which the defendant resided more than, say, 50 miles from the court of issue, defendant should be at liberty to decline to attend the hearing of the summons for directions unless the costs of himself and his solicitor of such attendance were previously paid. The plaintiff would have the option of paying such costs or proceeding under the existing practice in a modified form, each party being examined before his local registrar by an agent of the other party.

Chancery procedure has been so much improved of recent years that I will not touch on it except to suggest that, in applications for the appointment of a receiver in partnership and administration actions, every effort should be made to take the evidence *viva voce* and not by affidavits, which seldom elucidate the truth and lead to frequent adjournments.

One is familiar with the production of elaborate plans and models in cases of running down, trespass, air and light, and disputed public and private rights of way. The draftsmen's fees incurred by these aids to justice are often a serious item. To those in court who know the *locus in quo*, the attempts of those who do not know it, to read the plans and visualise the scene, are sometimes diverting. A few judges visit the spot privately, but this does not obviate the expense in question. The true solution has been found by at least one county court judge. It is to dispense with such adventitious help and to try such cases on the spot. To those who spend a considerable part of their lives in genially-warmed courts, the idea of being exposed for some hours to the rigour of the English climate does not present great attractions. The question, however, is not one of personal comfort, but of efficiency. The task is, perhaps, not for the aged, but to the younger members of Bench and Bar, and to all motorists, it should present attractions both healthy and profitable. It may be suggested that the respect of the populace for the law would be lost in such common-place surroundings, but true dignity is a matter of personality and not of robes and wigs. Trial on the spot would also obviate the dragging of witnesses to London or to the assize town. The loss of time of and allowances to most witnesses would be measured in minutes rather than in days, and their travelling expenses would often be nil. Compare for one moment evidence given by a man who has been dragged from his home and has waited in crowded courts in a strange city, to the evidence of the same man, called off his work, and describing the incidents when standing on the site where they took place. I suggest that trial on the spot rather than in court would shorten the proceedings, save an infinity of expense, and present far greater opportunity of arriving at the truth.

If trial on the spot presented no advantages, the date and place would be decided by the registrar after giving the utmost consideration to the wishes of the parties. In all witness actions, a hall in the town which is nearest to the majority of the witnesses should be selected. Bench, Bar and solicitors should wait on the parties.

A word as to the cause list for cases not tried on the spot. Credit must be given to the officials for the care with which the list in recent years has been prepared. Litigants complain bitterly and justifiably that they are sometimes kept for days waiting for their cases to be called on. They little know that this is invariably caused by the anxiety of the officials that the judge's time shall not be wasted for one moment, an anxiety foolish in origin and pernicious in effect. The chafing crowd is not exclusively composed of the leisured classes. Many of its members have business matters fully as important as the judge's own, crying for their attention, the while they cool their heels awaiting his ear. This holding up of the vital affairs of fifty private citizens in order that the State should not lose one shilling's worth of the services of one public servant is archaic in its policy. The remedy is obvious. It is to give each judge, when sitting in court in London or in any centre with a local Bar, a list as at present and, at intervals during the day, to call in just as many members of the Bar, to act as assistant judges, as are necessary to clear such list. The exercise of judicial functions by those selected to be on the rota would give them experience and afford the authorities an admirable opportunity for testing qualifications for preferment to the permanent Bench. The system outlined should present no difficulties in centres without a local Bar at a distance from London, as, normally, the first case in the list would be the only case justifying the attendance of a judge, and, as necessary during the day, the services of counsel engaged in the first case, of the registrar, and of solicitors nominated by the local Law Society would be utilised. To tell a litigant who provides the court fees, that he must come with his witnesses again and again, as the court has gorged itself with work which it cannot get through, disgusts all business men and justifies every epithet which they apply to the system. I fail to appreciate Lord Birkenhead's objection to taking a man from the Bar and putting him on the Bench. If carefully selected, the members of the temporary rota would prove equal in ability to many on the permanent list. By the use of Commissioners of Assize, the system has worked admirably in the criminal courts, and were it applied to civil matters, every case could be called on on the first day it was in the paper, and remanets would become things of the past.

Appeals are a serious addition to the cost of litigation. The prohibition of appeal is already sufficiently extensive and should be relaxed rather than extended. The true preventive of appeal is a strong court of first instance. The constitution of such a court is hardly germane to the subject of my paper. Trials by jury would take place as now, except that the verdict of a two-third majority should be accepted. For non-jury common law actions for debt or damages, the court should consist at least of two laymen plus a lawyer in the chair. In all cases involving technical knowledge, one (not both) of the laymen should be an expert. No expert evidence should be allowed in actions under £100. A court such as this would inspire confidence, and the percentage of appeals would be materially decreased. I say "lawyer" advisedly, as I think it quite unnecessary for a permanent judge to attend in a case involving only questions of fact. On the other hand, in questions involving a difficult point of law or construction of a statute, however small the amount involved, a divisional court of first instance of two or three judges should sit. For this purpose two judges should attend and civil business should be taken at every assize.

In conclusion, I would point out that the psychological effect of nursing a grievance has in itself a peculiarly adverse influence on the health and stability of the would-be litigant, and, when he is unable to obtain justice through lack of means, any mental instability is intensified, sometimes with disastrous results. Often he becomes a source of anxiety to his family, and a terror to his neighbours. Even if he is in the wrong, our system should not deny him the opportunity of airing his grievance. To be allowed to do so would, in a large number of cases, bring peace of mind.

Our branch of the profession has but the slightest influence in moulding the rules of practice which make for heavy costs. Slight however as it is, it should be unceasingly employed for the public weal, which is that no man should suffer a wrong and be deterred for a moment from obtaining justice through fear of being ruined or even impoverished in the process.

In the discussion which followed, Mr. R. FARMER (Chester) said that the majority of the claims entered in the county court were under 10s., and he could not think that there would be any decrease in the cost of litigation if they were entered in the High Court. He hardly thought it would add to the dignity of the court or that it would assist the client if the proceedings were heard by the judge on the spot. How, for instance, would a dispute as to a right of way on a Welsh mountain be assisted by the court being held on the spot in the winter time? If the county courts had unlimited jurisdiction, that would tend to the decreasing of costs. Actions were frequently tried where the limit of £100 was brought about by the abandonment of a part of the claim. Surely the judge who was able to try a case involving £100 was equally able to try one of the value of £500, and an action of that kind tried in the High Court would cost double what it would in the county court. It must be remembered that solicitors had right of audience in the county court and there were many who were capable of conducting the somewhat serious cases that came before them in that court as well as at assizes. Although solicitors were generally credited with all the costs in a suit, it must be remembered that there were other costs which should not be laid at his door, such as those of expert witnesses, and so on.

Sir J. BURROW GREGORY (London) said it must be borne in mind that in the ordinary bill of costs in a law suit the solicitor had to carry the burden upon his shoulders though the proportion of his charges were small as compared with the whole of the charges. He had to pay the auctioneer, the doctor, the expert witness, the photographer, the shorthand writer, and counsel, and all those charges were included in his bill with the result that the client, whether satisfied or not, was apt to say that his solicitor had charged him so much. One of the most effective ways of reducing costs was by ensuring that there should be a speedy trial.

Mr. C. L. NORDON (London), as a member of the council, said that he could assure the meeting that they had always taken the view that everything should be done with the object of decreasing the costs of litigation, whilst at the same time they maintained the right of the solicitor to fair and proper remuneration. He urged that legislative enactments should be drafted in terms that were so clear that everybody could understand them. It was difficult very often even for the lawyer to understand what the Parliamentary draftsman intended in an Act of Parliament. Judges themselves could not understand it, nor could the lawyers. Then the service of the various documents connected with proceedings might, he thought, be entrusted to the post office instead of requiring that they should be served by officers of the court. If the dispatch of such documents were left in the hands of the registrar of the county court or the associate in the High Court to deal with it would be a great advantage.

Mr. R. A. PINSENT (Birmingham) thought that the difficulty in understanding Acts of Parliament lay not so much with the Parliamentary draftsmen, as with the ignorant and uninformed members of both Houses of Parliament. If the bills were sent back to Parliamenatary draftsmen to be remodelled much good would be accomplished.

SOLICITORS' CLERKS PENSION FUND.

Mr. BERNARD H. DRAKE, C.B.E., M.A., read a paper, and after dealing with the proposal for the establishment of a contributory pension fund, said:—

The census returns of 1921 show that the number of male clerks connected with the law (which includes barristers' clerks and other, as well as solicitors' clerks) numbered 21,770. This seems a very much smaller number than would have been anticipated, in view of the fact that in the same year 14,623 solicitors in England and Wales took out practising certificates. Of this number of 21,770 clerks, 1,059, or 4.8 per cent., were aged sixty-five years or over.

The census returns also show that the population of England and Wales lives to a greater age than before, but that though a larger number of males aged sixty-five and over are engaged in occupations than before, the number of such males is proportionately less than before.*

* The total population increased from 36,070,492 in 1911 to 37,886,699 in 1921, an increase of 5.035 per cent. only, but of this population the number of persons of both sexes aged 65 and over increased from 1,878,516 in 1911 to 2,291,105 in 1921, an increase of 21.9 per cent., and the number of males alone aged 65 and over increased from 809,370 in 1911 to 980,230 in 1921, an increase of 21.1 per cent. Moreover in 1911, 453,318 or 56 per cent. of the males of 65 and over were engaged in occupations, and in 1921 the number of males of 65 and over engaged in occupations had risen to 517,960, which is 52.8 per cent. of the males then aged 65 and over, and is an increase of 14.2 per cent. of the number of such males in 1911.

It may be of interest to note here that, according to the Actuaries Healthy Males Table, the expectation of life of a man who has completed twenty-five years of age is 38.405 years, at sixty-five years (at which age it is proposed that the pension should commence) the expectation of life is 11.012 years, at seventy-five years of age 6.376 years, and at eighty years of age 4.719 years.

Under the present practice, even those firms which are in a position to grant pensions to superannuated employees, and who in fact do so, can seldom be sufficiently confident of the remote future to make such pensions part of the contract of service so that the benefit of the pension can be reflected in the amount of the clerk's salary; and consequently the clerks receive full salaries calculated without reference to the possibility of their ultimately receiving a pension, but when the time arrives, the employer still finds himself in many cases obliged to grant a pension. Moreover, those firms who do grant pensions are doing so to men whose best service to the firm was rendered many years previously, when the firm may have been differently constituted, and the cost of pensions can never be exactly proportionate to the business done and the staff employed by the firm for the time being. This result can only be achieved by a pension fund such as is now proposed.

The establishment of the proposed pensions scheme would enable solicitors to offer their employees the same advantages with regard to provision for old age as are now offered by the Civil Service and the larger commercial institutions such as banks and insurance companies, and should not only promote contentment and cordiality between the solicitor and his staff, but should very materially assist in attracting the best class of clerk into solicitors' offices.

The object of the fund is not to tie the clerk to his employer for the time being. While we all hope that those of our staffs who have studied our particular methods and fill responsible positions will always remain with us, a certain degree of mobility among the junior members of the staff is inevitable and even desirable, so that each clerk may ultimately find the situation most suited to his talents; and in any case it is not desired to hamper the right of any clerk to transfer his services, if he thinks fit, by the fear of losing the benefit of a prospective pension. On the contrary, it is anticipated that as soon as the fund is established it will enable even a middle-aged clerk, if he so desires, to change his employment with greater facility than he can do at present, because if the clerk has been a member of the fund for a reasonably long period, his new employer can, by paying his half of a small annual contribution, secure the services of an experienced employee without fear that in a comparatively short time he will either have to continue the employment of a clerk who is yearly becoming less efficient, or to pension him, notwithstanding that other employers have had the benefit of the best years of the clerk's life. This will, in fact, be one of the most important results of the institution of the fund.

It may be useful at this stage to note briefly the different types of pension funds which have already been instituted and are available as precedents.

Private industrial pension schemes are generally one of three types:—

(*a*) A non-contributory system of what has been called the "discretionary type," under which the employee makes no contribution and is expressly debarred from any contractual right to a pension, or even to the continuance of a pension which has commenced, the granting or continuation of which remains in the discretion of the employer.

(*b*) A non-contributory system of what has been called the "limited contractual type," under which the employee makes no contribution, but, while the granting of a pension is in the discretion of the employer, once the pension has been granted, it cannot be discontinued.

(*c*) A contributory system under which both employer and employee contribute to the fund, and the employee has a contractual right, not only to a pension, but usually also to some benefit if he ceases to be a member of the fund before attaining pensionable age.

It is understood that in the U.S.A. the great majority of private industrial pension systems are of the non-contributory discretionary type. It is, however, not necessary for us to consider the advantages or disadvantages of this scheme further, as it is obvious that, so far as our profession is concerned, this type of fund achieves little, if anything, beyond what many firms are already doing, and offers none of the advantages to be gained by combined action.

The second or limited contractual scheme of pension is stated not to be common, and may also be dismissed in the same summary manner, as, though it is on the whole preferable to the discretionary type, it provides no benefit until the

pension has been granted, and gives the employee no advantage unless he remains in the service of the same employer until he reaches the pensionable age.

There remains the contributory system, which is now rapidly being accepted as the best industrial pension system, and which is more particularly suited to our professional requirements because :—

(*a*) It encourages thrift.

(*b*) It gives the employee a contractual right on payment of the prescribed contributions to the pension for which he has contracted, and insures him against want in his old age.

(*c*) It insures the employer against the liability to pay pensions, and facilitates the elimination of the inefficient from his staff.

(*d*) It promotes *esprit de corps* and goodwill between employer and employee.

(*e*) It enables a fund to be established which is financially sound and can be actuarially checked.

(*f*) It enables the employee to continue to be insured if he changes his employer, and thus facilitates the employment of middle-aged or elderly employees.

Many of the systems which have been instituted by the larger industrial and commercial firms are built up by deduction from the wages of the employee, whatever the wages of the employee may for the time being happen to be, and the pension is proportional to the employee's length of service and to his salary at the date of his retirement or to his average salary. Such schemes are difficult to place on an actuarially sound basis, and the employers' guarantee is necessary to secure solvency. Such systems are not suitable to solicitors' clerks, as a pension fund adapted to their needs must enable the clerk to move from one employer to another, must be actuarially sound, and cannot depend upon a guarantee from the employer for the time being.

A contributory pension fund can either be built up by the employer or a group of employers themselves, or can be worked through insurance companies. All life offices are now prepared to issue policies securing deferred annuities, with or without a return of premiums in the event of death of the member before reaching the pension age, and pension schemes worked in this way offer many facilities, particularly if the employer's firm is not large, as there is, of course, no question as to the security of the benefits. On the other hand, it is often difficult for an insurance company to give the exact benefits desired, and, in the case of a fund of the size of the fund we are now discussing, it is probable that, as no profit would have to be provided for, the benefits would be larger. It is understood that such a scheme as is proposed can be placed on an actuarially sound basis if not less than fifty young lives became members, and, as the membership of the proposed fund is certain to be very large, there can be no question as to the possibility of establishing and maintaining the fund on an actuarially sound basis. There seems little doubt, therefore, that both the members of our profession and their clerks would prefer to manage their own pension fund.

In this country many contributory pension funds of varying types have been instituted within recent years. One of the most notable is a pension fund instituted for the benefit of Stock Exchange clerks. The details of this scheme seem to be admirably thought out and great credit is due to the authors of the scheme. The present scheme for instituting a fund for solicitors' clerks has been based on the Stock Exchange scheme, though in details the scheme must necessarily be modified to meet our own requirements. It is understood that Lloyds are considering a similar scheme for their own clerks, and it appears obvious that the time is ripe for us to institute our own scheme.

It is not within the province of this paper to suggest the amount of pension which should be contracted for. This must necessarily vary in each case, according to the amount which the clerk is prepared to contribute, and also the amount which his employer is prepared to contribute. A maximum of £300 is proposed, and it is likely that most pensions will be considerably less than this. There does not, however, appear to be any reason why a clerk who enters the fund on a small contribution proportionate to his means, but who advances rapidly, should not increase the pension to which he will become entitled, either by the payment of a lump sum to be actuarially ascertained, or by making a fresh contract for an additional pension, the contributions for which would be calculated according to his age at the time of making the fresh contract.

It is proposed that pensions for male clerks should commence at the age of sixty-five, which is the age at which State pensions commence under the Contributory Pensions Act, 1925.

Some pension schemes provide for benefits in the event of death, disability or sickness, but it must be remembered that the inclusion of such benefits must very materially increase the cost of the contributions, or, alternatively, decrease the amount of the pensions to be received. The cost of the inclusion of a payment on death would, of course, depend upon the amount of the payment to be made on death, but, apart from any other consideration, the fact that any such benefit would involve medical examination and a calculation of the probability of premature death is sufficient to make such a benefit unsuitable for the purposes of the fund we are discussing. It is proposed that in the event of death before pension age, a member should be entitled to a return of all the contributions made by himself or his employer with compound interest at 3 per cent., and this provision eliminates the undesirable elements of a tontine system, and the risk of a member losing by death the benefit of the premiums he has paid, and also provides a fund in the event of death. If such provision is not sufficient it is suggested that insurance with a life insurance office would best meet the case.

The provision of disability benefits would mean a reduction of approximately 25 per cent. in the amount of pension which could be paid for the same contribution, and, as the main object of the pension fund is to provide pensions of as large an amount as possible, it is suggested that this is too large a reduction to face, and would involve too much expense in administration. It would seem that disability and sickness can best be met by benevolent associations formed for the express purpose.

The fundamental principle of the scheme is to entitle the employee to a fixed pension as a matter of contract, and it is submitted that it is essential to preserve this principle. The scheme should therefore be free from any suggestion of discretionary benefits, and should not carry any ancillary benefits in the event of death, sickness or disability. These latter contingencies are uncertain in their incidence, and, while they are properly the subject of ordinary insurance or of benevolent funds created especially for that purpose, their inclusion in the present scheme would necessarily make it impossible to calculate exactly the amount available for pensions.

While, therefore, it is considered both desirable and fair that provision should be made in the scheme for female clerks, it is suggested that the age at which the pension should commence should be sixty, instead of sixty-five as in the case of men, and that, in view of the different expectation of life, a different scale of contributions should apply. In all other respects the rules would be the same for men and for women. It is possible that the increased cost of providing pensions for female clerks under these conditions will be offset by the smaller amount of pension which a woman will consider necessary.

A problem which will no doubt arise immediately on the initiation of the fund will be how best to deal with the clerk who has reached such an age that the contributions of himself and his employer must necessarily amount to a considerable sum. In some cases the problem will no doubt be solved by providing for a smaller annuity under the fund than would have been provided if the clerk had been younger, but this will in other cases not be entirely a satisfactory solution. To meet such cases, the rules of the fund can enable the trustees to receive a lump sum (which would be actuarially calculated) on accepting the clerk as a member of the fund, or possibly at a later date, which will enable the contributions of both the clerk and his employer to be calculated at a rate applicable to a younger age than the actual age of the clerk. It is suggested that the payment of such lump sums provide an admirable means by which an employer can benefit an employee to whom he desires to give some form of bonus.

As the proposed system is actuarially calculated on the age at entry of the prospective pensioners, and every member of the fund is a contributor in exact proportion to his age and the amount of his prospective pension, it is not difficult to ensure that the fund shall be at all times actuarially and financially sound, and there is no question of having to make provision for what in the case of private pension funds it is understood the actuaries term "accrued liabilities," viz. : the provision of pensions for members who at the time of entry are already aged, on any terms other than such as are actuarially proportionate to the age of the member.

A question which will naturally occur to anyone who considers the proposed fund is whether in the long run the contributions to the pension fund will in fact be borne by the solicitor or by his clerk. It is impossible to answer this question with certainty, but it is suggested that the amount of the contribution is too small for the solicitor to reduce the wages of the clerk by the amount of the solicitor's contribution, and, on the other hand, the clerk's contribution is too small for his wages to be increased by an amount equivalent to his contribution, so that in practice each party will actually bear his own contribution.

An important advantage to be gained by the adoption of a pensions scheme is relief from income tax, and this relief applies, not only to the income of the fund itself, but to the contributions of the employer and his clerk.

Section 32 of the Finance Act, 1921, provides that the income of a superannuation fund which has been approved by the Commissioners of Inland Revenue is exempt from income tax. This concession alone has a considerable effect upon the amount of the contributions required, and, in fact, results in a reduction in the rate of contribution, ranging from 30 per cent. at the age of twenty to 10 per cent. at the age of sixty. Under the same section, the ordinary annual contributions paid by an employee to an approved superannuation fund are regarded as an expense in computing the amount of his income tax assessment, and by the same section the ordinary annual contributions paid by employers to the fund are treated as expenses in computing their profits or gains for assessment to income tax. Where any contribution paid by an employer is not an ordinary annual contribution, the Commissioners may direct that it be treated either as an expense incurred in the year in which the same is paid, or as an expense spread over such period of years as the Commissioners think proper. A capital sum which the employer might contribute to enable a middle-aged clerk to rank for contribution as a younger clerk would fall under this provision.

These provisions for relief from income tax indicate a desire on the part of the legislature to encourage thrift through the medium of superannuation funds, and, in contrast to these provisions, the provisions as to State old age pensions must be noted, as the provisions of the State old age pensions, so far as they affect pensioners under the proposed scheme, are not satisfactory.

Under the Contributory Pensions Act, 1925, which includes clerks remunerated at a rate not exceeding £250 a year, pensions due are payable without enquiry as to means, and consequently all such clerks would receive their old age pension under the Contributory Pensions Act, 1925, at the age of sixty-five, in addition to any pension they may be entitled to under the proposed pension fund. If, however, a clerk is in receipt of remuneration exceeding £250 a year, and does not continue as a voluntary contributor, he can only be entitled to a State old age pension at the age of seventy under the Old Age Pensions Acts, 1908-1924. Under these Acts reduced pensions only are payable where the means of the pensioner exceed certain specified amounts. As a result, a clerk in receipt of a pension under the proposed pension fund, who is not insured under the Contributory Pensions Act, 1925, would, particularly if he is not married, receive a greatly reduced State old age pension or no pension at all.

The retention of a means limit is, at any rate, in some cases, inequitable and illogical, and the report of the Departmental Committee on Old Age Pensions in 1919 reported in favour of abolishing the means limit altogether. It is, however, probably too much to hope that the legislature will adopt this course in the near future. It does not, however, appear to be too much to hope that the legislature will in the near future be consistent in its encouragement of thrift through the medium of superannuation funds, and will provide that pensions received under an approved contributory pensions fund shall not be included in estimating the means of an applicant for a State old age pension.

In the meantime members of the proposed pension fund who cease to come under the Contributory Pensions Act, 1925, should consider whether they should not continue as voluntary contributors so as not to lose the benefit of the State old age pension.

To turn to the fund which it is proposed to establish for solicitors' clerks, it is only possible within the limits of this paper to indicate in outline the provisions suggested, most of which have already been discussed. To summarise, therefore: The scheme proposes to provide each clerk who becomes a member of the fund with a pension at the age of sixty-five in return for annual contributions in equal sums from the solicitor and his clerk. As examples of the contributions which would be necessary, it is estimated that a pension of £100 per annum, at the age of sixty-five, in the case of a male clerk, would be secured by a total annual premium at the age of entry of £7 2s. in the case of a clerk aged twenty-two next birthday, of £11 4s. in the case of a clerk aged thirty next birthday, and £21 11s. 4d. in the case of a clerk aged forty next birthday.

It is suggested that the pensions in the case of female clerks should be payable at the age of sixty and, as already explained, the scale of contributions in the case of female clerks would necessarily be higher than in the case of male clerks.

The annual contributions can be commuted in whole or in part by the payment of a capital sum.

In the event of a clerk attaining the pensionable age the pension would be payable for three years certain.

Should the clerk not require the pension at the pensionable age it can be deferred, in which case a larger pension according to the length of time deferred would be paid.

The maximum pension which could be contracted for would be £300 per annum.

Should the clerk become admitted as a solicitor his pension rights would not be affected so long as he remains a clerk.

The clerk, on attaining the pensionable age, will have the right to commute his pension for one for the joint lives of himself and his wife or the survivor. The amount of such pension would of course depend upon the age, and, possibly, the health of the wife.

Should the clerk die before attaining the pensionable age, contributions made by him and on his behalf would be repaid with compound interest at 3 per cent.

Provision is made in the scheme for cessation of payments and cessation of employment.

The scheme involves a trust deed and rules. The fund would be managed by a committee of management, and the funds would be vested in trustees representing employers and clerks. It is suggested that three members of the committee of management should be appointed by the Council of The Law Society, two by the Associated Provincial Law Societies, and three by the clerks, and that the trustees should consist of two nominated by the Council of The Law Society, one by the Associated Provincial Law Societies, and two by the clerks. All solicitors and their clerks would be available as members, and the fund would not be confined to members of The Law Society.

As no fresh scheme for a pension fund can now be original, it may be claimed for the proposed scheme that it possesses many outstanding advantages, and that, if it is not perfect in that it does not cover every misfortune which may overtake its members, it does cover the most serious liability, and the one which the majority have to face, and only does not cover the minor liabilities because these, being uncertain in their incidence, would seriously embarrass the financial stability of the fund, and are more properly covered in other ways. It must, however, be emphasised that the full benefits of the fund will only be obtained when it is widely adopted. To the clerks it is essential that if they should change their employment they should find the new employer ready to continue the contributions commenced by their former employer, and to the employers it is very important that clerks who come to them in middle age, or even in old age, should have become members in early life, when the contributions of both employer and clerk were fixed at a modest sum. The benefits of the scheme to both sides are so obvious that it may be confidently anticipated that within a very short time no responsible employer will engage a clerk over, say, twenty-five who is not or refuses to become a member of the fund, and no good clerk will accept an engagement with an employer who refuses to pay his contribution to the fund.

Both the employer and the clerk benefit by the proposed fund, and have reason to welcome its institution. For, if this fund does not quite attain the statesman's ideal of "Ninepence for Fourpence," it will certainly give to each party to the contract eightpence for fourpence. But, apart from the material advantage which will accrue to the employer, there can be no doubt that all employers will welcome the opportunity of providing on an easy and equitable basis for the staff on whose efforts we are so largely dependent. There can be few of us—and those few must be singularly unfortunate—who do not owe a debt of gratitude to some at least of their staff, whose loyal and devoted service have made it possible to carry out the arduous and responsible duties of our profession; and to be able to remove from the minds of so large and deserving a class the haunting fear of poverty in old age, and to give them the secure knowledge that their old age, when it comes, can be faced with dignity and content, is surely worth the comparatively small contributions required from us.

Mr. LANE (Sheffield) asked some questions to which Mr. DRAKE replied. The following resolution was unanimously carried:—

"That this meeting having heard the scheme submitted by Mr. Drake resolves that it be referred to the council to consider and report upon at a future meeting of the Society."

THE BANQUET.

Over two hundred members and guests attended the banquet on Wednesday evening, 3rd October, at the Grand Hotel, Eastbourne, over which the President of the Eastbourne Law Society (Mr. A. Chester Hillman, J.P.) presided.

The assembly was a distinguished one, those at the head table including the Mayor of Eastbourne (Councillor Miss Alice Hudson, J.P.), the Lord Chancellor (Lord Hailsham), Mr. R. M. Welsford, M.A., LL.B. (President of the Law

Society), Admiral Sir Reginald Hall, M.P., Lord Justice Greer, Mr. Justice Eve, Sir Thomas R. Hughes, K.C. (Chairman of the Bar Council), the Vicar of Eastbourne (Canon W. C. Streatfield), Sir Claud Schuster, K.C. (Lord Chancellor's Secretary), Mr. W. H. Foster (Vice-President of The Law Society), His Honour Judge Moore Cann, Sir Charles H. Morton, Sir Oswald R. A. Simpkin (the Public Trustee), Sir Roger Gregory, The Hon. A. E. Napier (Assistant-Secretary to the Lord Chancellor and Deputy-Clerk of the Crown), Alderman G. B. Soddy, Mr. A. P. Aizlewood, Mr. E. C. Martin (Superintendent of County Courts), Mr. H. R. Blaker, Mr. C. G. May, Mr. E. C. Arnold (Headmaster of Eastbourne College), Mr. A. M. Ingledew, the Mayor of Hastings, Mr. J. Stewart Wallace (Chief Land Registrar), Mr. F. Lawson Lewis (Vice-President of the Eastbourne Law Society), Sir Robert Dibdin, Mr. C. E. Barry, Mr. E. R. Cook (the Secretary of The Law Society), Mr. Henry Cane (President of the Sussex Law Society), Mr. H. A. Dowson, Mr. H. G. Pritchard, Mr. E. S. Douglas (President of Hastings and District Law Society), Mr. H. H. Scott, Mr. R. Farmer, Mr. H. W. Fovargue (Town Clerk of Eastbourne), Mr. S. Saw, Mr. W. C. Johnson, D.K.S., and Lieut.-Colonel S. T. Maynard.

Lord Merrivale (President of the Probate, Divorce and Admiralty Division) was prevented from attending.

The toast of "The Law Society" was proposed by Lord Justice GREER, who said he regretted very much that Lord Blanesburgh was, owing to important public duty, still on the Continent, and therefore the privilege of submitting the toast had fallen to him. It was a very difficult task he had to perform, because in asking those present to drink to such a toast, he was largely asking them to approve of themselves. He recalled that the profession of attorney, as it was formerly called, was not always held in such high esteem as it was at the present day.

You may remember the anecdote about the man who stood in front of a gravestone with the notice on it: "To a lawyer and an honest man," and who said to his neighbour: "How did they manage to bury the two fellows in the one grave," remarked the speaker amid laughter; and you may also possibly remember one of His Majesty's judges who said: "It takes five years to make an attorney."

Coming to more recent times, they had the gallery of portraits painted by Charles Dickens. It was not so long ago, and it might not be true that these things represented the public reputation of the profession, but to some extent opinion had changed. There was now no body of men who were held in higher esteem in this country than the solicitors, and that was mainly due to the work of The Law Society. Those who belonged to the Society set a high example of what professional men ought to be, and the result was that opinion of the profession had changed greatly from the days he had quoted. And that was not the only reason why The Law Society should be esteemed by the public. The Society kept a watchful eye over proposed legislation which came before Parliament, suggested useful amendments, and were always ready to show why some bills should not become Acts of Parliament. They also suggested from time to time valuable amendments of the law. During the eighteenth century and the early part of the nineteenth century it was customary to think that the laws of this country were the last word in wisdom: that was at a time when a man was hanged if he stole from a house anything above the value of £5, when there were hundreds of offences which were capital offences. There was also the day when the laws were trammelled by the unchecked technicalities of the Middle Ages. He had been given to understand that they had been swept away by Lord Birkenhead's Act (laughter). The strongest opponents of the most beneficent reforms which had been brought about by Parliament were the judges of the land. He was glad to find that there were so many solicitors who were members of The Law Society. He hoped the time would never come when The Law Society would cease to watch legislation and secure valuable amendments of the law.

The Law Society had established in London and in other centres in the provinces excellent schools of law. He once had the privilege of lecturing to the students at Liverpool, appointed by The Law Society and that University, and there were in his class both barristers and solicitors, and he was proud to say that at the end of the course a barrister was at the top—and a barrister was also at the bottom! Yet both of them now occupied eminent positions, one, he would not say whom, being an eminent K.C., and the other an eminent public teacher of law (applause).

Lastly, the Society had conferred great benefits on the poor by the organisation under the Poor Persons Rules. He trusted that the Society would in the future continue its many activities and continue to confer great benefits on the community, and that it will always have at its head a man of great industry, sound judgment and unassailable integrity, as it has in this year of grace 1928, in Mr. Welsford. I trust, also, the profession will continue to provide, as it has done in the past, men who come to the Bar and obtain great distinction in the ranks of advocates and upon the Bench. I dare say all of you know that three of the greatest Lord Chancellors this country has ever had came from attorneys—Lord Summers, Lord Mansfield, and Lord Hardwicke (prolonged applause).

Replying, Mr. R. M. Welsford (President of The Law Society), said he had been asked to preface his remarks by asking those present there and then to remember what Eastbourne had done for them. On behalf of The Law Society he desired to tender to the town his most sincere thanks for the great hospitality it had shown them during the meeting. The Secretary (Mr. E. R. Cook) told him there were present the highest number that had ever been to their Provincial Meeting—in fact, this was a record. Never before, as far as he could ascertain, had a meeting been held in a more delightful town and in more charming surroundings than they now had.

It was essential that there should be close contact between London and the provinces, and these meetings strengthened that contact, added Mr. Welsford. These were opportunities for London and the provinces to meet one another and exchange views on the welfare of the profession, and for these splendid meetings members had travelled from Newcastle, Leeds, Liverpool and elsewhere. He needed only to add his great thanks to the members of the Eastbourne Law Society for the great trouble they had taken to extend them the hospitality. A great deal of labour must have devolved on their Secretary (Mr. N. C. Hurst) and on behalf of The Law Society he thanked him, personally, very deeply (loud applause).

"The Bench and the Bar" was submitted by Admiral Sir Reginald Hall, M.P., who was making his first public appearance after an absence of five months through indisposition.

Sir REGINALD said that at sea they had a method of getting over their troubles, the method of conciliation. Lord Justice Greer had referred to the troubles of the poor in settling their cases, but he ventured to think it was possible to go a step further in their legal arrangements. He thought that suitors were faced with many disabilities in settling their cases, especially among the poor. He knew, and he expected those present knew, that in Denmark they had a system of conciliation which had been working since 1795. This system meant that in certain cases people could not go to law until they had referred the case to a conciliation officer, and had received from him a certificate declaring that he had failed to settle it.

"Having dealt with men and having to settle their cases in the Navy, I know how difficult it is for many to state their cases to those whom they think are superior," added Sir Reginald; "I know how difficult it is to get men aside and make them talk about their troubles. My experience is that you could save many cases if you had a conciliation officer. It is not part of my duty to suggest something in the operation of the law. It is for the Bench and the Bar to help themselves as best they can, but I do feel sure that at the bottom of the heart of every man at the Bench and Bar is a desire in ninety-nine cases out of a hundred to make a settlement without going to court." (Applause.)

Replying, Mr. Justice EVE said: "I hope you will believe me when I say I join in responding to this toast with sincere and real pleasure. Indeed, when I read the preliminary programme of the toasts and arrangements for this evening, which the President was good enough to submit to me, I came here looking forward to an occasion almost unique, inasmuch as you had decided that the distinguished President of the Probate and Divorce Division should be joined with me as co-respondent—(laughter). Among a great many less important and humble individuals who find themselves in that position, the learned President has determined that discretion is the better part of valour—(laughter)—and has not entered an appearance—(loud laughter)—and has sent me to face the music alone. (Laughter.) So what might happen to me in other surroundings and in different conditions I am not prepared to say. But recalling, as I do, that I have among you many old and tried friends, I am quite content to leave myself to the mercy of this congregation. And if any one of you should believe me that I am becoming somewhat of a standing dish at these pleasant annual re-unions, I hope you will appreciate that I have some of the qualifications necessary for that role, when I remind you that the definition of a dish is 'a slightly hollow vessel for the reception of food.'" (Laughter.)

Mr. Justice Eve continuing said that Admiral Hall had referred to the legal profession in extremely felicitous terms, but apparently they were supposed to return to some inferior tribunal cases they were paid to try! He would like to

inform the Admiral that when some high judicial officers of Denmark were in this country, he happened to ask one, partly in Dutch and partly in German, what was the highest salary of a judicial officer there, intending if it was in excess of his own to emigrate there. But he was told that it was £183. (Laughter.) In every walk of life the intrinsic value of approbation and commendation was to be measured by the source from which it emanated. Did it reflect the candid, sincere, and honest opinion of a section of the community armed with knowledge and qualified by experience to express an opinion, or was it born of that redundant kindness of heart, that spirit of abundant good fellowship which was engendered towards the world generally? They must ask themselves that question in reply to such a toast. He would be doing an injustice to that distinguished assembly were he to record the acceptance of the toast by what the Admiral did not say, but by what he meant to say—(laughter)—but they did appreciate his good opinion and would do their best to retain it.

Mr. Justice Eve referred in conclusion to the county court judges. "Never a session passed but what some further duty was imposed upon them, duties of a responsible nature without any co-ordinate consideration of the insufficient salaries they were now drawing," he said. "But these and all those at home and abroad entrusted with the sacred duty of administering justice were encouraged and strengthened in their efforts by such a toast." (Loud applause.)

Sir THOMAS R. HUGHES, K.C., also replying, said he was afraid he was the only practising member of the Bar present, although there were a good many others who might be still members of the Bar. There was one on his right (the Lord Chancellor), but he desired to maintain a strictly private position. On behalf of all the Bar present, however, he (Sir Thomas) desired to thank the Society very cordially indeed for their hospitality. He would like to add one word in appreciation of the most valuable work the Council of the Society were doing for the suitor. As chairman of the Bar Council, he came in contact with young, enthusiastic members like Sir Charles Morton and Sir Roger Gregory, who were always proposing some reform and asking the Bar Council to assist them. Sometimes their enthusiasm was so great that it placed the Bar Council in difficulties—(laughter)—but they did their best. The Law Society Council were extremely energetic and they did valuable work, and he was really amazed at the extraordinary amount of work they got through. The country ought to be grateful to them for what they had done, not so much for the advantage of the profession, but for the advantage of the suitor. (Applause.)

After "The Mayor and Corporation of Eastbourne" had been proposed by Mr. W. C. JOHNSTON, D.K.S., and responded to by the MAYOR (Miss Hudson), the CHAIRMAN (Mr. A. Chester Hillman) proposed "Our Guests," and said that one of the greatest pleasures of life was to be derived from entertaining friends and guests. In that respect they were indeed fortunate. They would remember that Father Abraham entertained the angels unawares—(laughter)—but he would not discuss any angelic qualifications the present company might possess. (Laughter.) He referred especially to the Mayor, who was alone with them to-night in all her dignity. Those who had heard and seen her would not be surprised to learn that the inhabitants of Eastbourne were very proud of their Mayor, and deeply grateful for the services she had rendered the county borough of Eastbourne. Then he must refer to the personal honour conferred upon them by the presence of the Lord High Chancellor, who had been compelled reluctantly to decline their invitation twice, but had been able to come to the banquet at the eleventh hour; and to the presence of Sir Reginald Hall, the Member for Eastbourne, Lord Justice Greer, Mr. Justice Eve, and Judge Moore Cann. It was evident that the judges still took a very great interest in The Law Society, and if they ever indulged in reminiscences, he was not at all sure that their memories would not take them back to the first commission they received from a member of the solicitors' profession. (Hear, hear.) But those present were welcome, one and all, and if they enjoyed themselves whilst they were in Eastbourne, their hosts were amply rewarded. (Applause.)

Sir OSWALD SIMPKIN (the Public Trustee) replied.

"Our Chairman" was proposed by Dr. A. H. COLEY, who said that The Law Society's welcome to Eastbourne had been truly jubilant.

The Law of Master and Servant.

There was an excellent attendance at a lecture given recently at the Inner Temple Hall to the Solicitors' Managing Clerks' Association by Mr. Guy Welsford, over which The Hon. Mr. Justice Branson presided. The title of the lecture was: "Some aspects of the Law of Master and Servant."

Mr. Welsford said: When I first received this invitation I did not know on what subjects lectures had been delivered to the Association in the past, so I tried to think of various subjects out of which Mr. Hammond might select one which was not in the nature of a specialist's branch of the law, but rather a branch of the law with which any person here to-night would come into contact in the course of the ordinary day's work. From the result of these deliberations on my part, Mr. Hammond selected "The Law of Master and Servant." Now this, as everybody knows, is a very big subject, and our time is limited here this evening, and as everybody has to get home, I propose to confine my remarks to the common law liability of the master for the injuries, that is to say, legal injuries, the results of tortious acts committed by his servant. To do this I propose to divide the subject in two ways. First of all, I want to deal with the characteristics of the relationship of master and servant, when that relationship exists, and secondly I propose to try and deal with the liability which is imposed upon the master by virtue of that relationship.

The relationship of master and servant arises from contract, express or implied, by one person to perform services for another. But not every contract of that nature necessarily creates this relationship; if I employ a painter to paint my chambers, that does not make him my servant. How then can we ascertain whether it exists between A and B, or between A and someone else, and if so, whom? It exists when one person employs another to work for him upon the terms that the employer shall have the right, not only to detail the work to be done, but also to direct and control the method in which it is to be done.

There are other incidental rights and obligations of the relationship, such as the employer's right to select and dismiss a servant, or his obligation to pay him, which, though usually found to exist, are not of themselves necessary to, or conclusive of, the existence of the relationship. A statutory obligation is sometimes imposed on local authorities to appoint and pay officials for the execution of certain statutory duties, but the relationship of master and servant is not necessarily created between the appointing authority and the official (*Stanbury* v. *Exeter Corporation*, 1905, 2 K.B.D. 838). Conversely, the relationship may exist when the right of selection is practically non-existent. The master of a ship, who desires to employ a pilot in any particular port, probably has to accept the services of whichever pilot is brought off to him in response to his signal, but the owner has always been responsible for the negligence of a pilot voluntarily employed, and since 1918, by virtue of s. 15 of the Pilotage Act, 1913, the owner is also liable for the acts of a pilot whom he is compelled to employ. Similarly, it does not affect the question that the selection of possible employees is necessarily limited to those who possess certain qualifications required by law, such as those required by captains and certain other officers of ships.

Payment of wages is not a necessary incident of the relationship; a servant may receive no wages; for instance, the head porter in a big hotel, sometimes depends entirely on tips for his remuneration. Or a person may request a friend or any third party to do something on his behalf, so that while that act is in the course of performance the friend becomes the servant of the person requesting him so to act.

The right to dismiss a servant is not necessarily conclusive. It often occurs that A, who employs labour, contracts to do work for B, and one of the terms of the contract gives B power to dismiss employees of A for specified causes, but this does not *ipso facto* make them the servants of B.

The mere fact therefore of one person selecting, paying, or having the right to dismiss another person, does not necessarily constitute the relationship of master and servant between them, but having found the person who exercises one or more of these functions we can apply the decisive test: Has he the right to direct and control the work of the servant for his own benefit?

We say "has the right" to control, because if that right exists the mere fact that it is not exercised for any reason is immaterial, it is the existence and not the exercise of the right which is the deciding factor. The conductor of an omnibus is subject to the direction and control of his employer as to the performance of his duties, and if he has authority to eject a passenger who misbehaves, and ejects one who in fact is not misbehaving, it is no answer for the owner to say that he could not control his actions while he was away on a journey (*Seymour* v. *Greenwood*, 1861, 7 H. & N. 355).

Similarly, if the owner of a car allows a friend to drive while the owner rides as a passenger, the friend drives as his servant—the owner has the right to control his actions and to resume control at any moment, and if the friend by careless driving injures a third party, the owner can be made liable: *Wheatley* v. *Patrick*, 1837, 2 M. & W. 650; *Samson* v. *Aitchison*, 1912, A.C. 844. But if the car was lent or hired to the friend, who was driving it alone, there would be no liability on the owner, as he would *not* have the right of control—the relationship between the owner and the driver would then be that of bailor and bailee only.

The right must be exercisable for the benefit of the person in whom it is vested, though the actual exercise of the right may be, and often is, delegated to another, e.g., a foreman or manager, but in such a case the foreman incurs no general responsibility as master for the acts of his subordinate, for he exercises the right on behalf of his employers and not for his own benefit.

In the same way, the heads of a Government Department are not liable as such for torts committed by their subordinates, though such subordinates may work under their directions and control; there is no relationship of master and servant between them, they are both servants of the Crown: *Bainbridge* v. *P.M.G.* 1906, 1 K,B. 178. But though they are servants of the Crown, no action will lie against the Crown for torts committed by its servants: *Tobin* v. *Regina*, 16 C.B. (N.S.) 310. The only remedy in such a case is to sue the person actually committing the injury, or a superior official, in his private capacity, who actually authorised or directed the wrongful act: *Raleigh* v. *Goschen*, 1898, 1 Ch. 73.

By the right to direct and control the work, we mean a right not only to say on what work the servant is to be employed, but also to dictate the method in which it is to be done, and generally to regulate the doing of it. This is to be distinguished from a right, after the work is finished, to object to it as having been badly done, or as not being the work specified by the agreement. If this latter is the only right, the relationship is not that of master and servant, but of employer and independent contractor. An independent contractor is one who practises an independent calling, and who agrees to perform a definite undertaking on the terms that he does it in his own way as he thinks fit, without control from his employer. The employer is not generally liable for injuries caused by the acts of an independent contractor or his servants, for the relationship of master and servant does not exist between them. A person may at first sight appear to be an independent contractor in that he has agreed to perform a certain task, but if it is desired to render the employer liable for acts of the contractor or his servants, this can only be done if, in view of all the facts of the case, the employer has an effective right of control over the person causing the injury. If the employer has not this right, then the contractor only is, as a rule, liable. There are certain cases where the law implies a duty on the employer, for breach of which he will be liable, even though the breach is committed by the contractor or his servants, but this liability not being one imposed on him because of his position as master, I am afraid we must leave that branch of the law for to-night.

Difficult questions arise where the regular servant of one person is temporarily working for another at the time of the wrongful act. In order to see which of these two persons can be held responsible, we must find which of them had the right, at the time of the wrongful act, to control the servant's actions. A good illustration is afforded by the cases of *Quarman* v. *Burnett*, 1840, 6 M. & W. 499, and *Jones* v. *Scullard*, 1898, 2 Q.B. 565. In the first case the defendants owned a carriage, and hired the services of a driver and two horses from a jobmaster. The driver received regular wages from the jobmaster, though the defendants always gave him the same tip when he drove them. The defendants had a livery suit made for the driver which was kept at the defendants' house. The plaintiff was injured through the horses being left unattended while the driver returned the livery at the end of a drive. It was urged that while returning the livery the driver was the servant of the defendants, but the defendants were held not liable as they had not the right to control the driver's actions as driver, and there was no evidence of any order by them to leave the horses unattended while the livery was being returned. In the second case, the defendant owned both carriages and horse and had hired the services of the driver from a jobmaster for the last six weeks. The driver had only driven that horse three or four times, as it was a recent purchase. It was also inclined to pull, and the jury found that it was improperly bitted for a puller, and so bolted, causing the accident. The defendant was held to be liable, as he had the right to control the driver's actions—he could order the driver to drive fast or slow, to use a curb or a snaffle bit, or to surrender the reins to someone else. This the defendants in the first case could not have done, only the jobmaster had that right, and this right to control the driver's actions at the time of the accident decided the question who stood in the relation of master to him.

Although in these cases the defendant was held liable when the property, i.e., the horse, which the defendant was engaged in handling belonged to the defendant, and not when the horses belonged to the jobmaster, the temporary employer of a servant may be liable, although the injury is caused through the way the servant is using property belonging to his permanent employer. In *Donovan* v. *Laing*, 1893, 1 Q.B. 629, the defendants let out on hire a crane with the craneman, whom they paid, to Jones & Co., to load one of the latter's ships. The craneman received his orders from Jones & Co as to raising and lowering loads, and swinging the crane from the quay to the ship and back, but on one occasion he swung the crane before receiving the signal, and the load swung against and injured the plaintiff. It was held that the defendants were not liable, as the right of controlling the operation of the crane had passed out of their hands and was vested solely in Jones and Co, and that the craneman was therefore, at the time of the accident, under the control of and the servant of Jones and Co. and not of the defendants (c.f., *Moore* v. *Palmer*, 1886, 2 T.L.R. 781). In the case of *Bull* v. *The West African Shipping Co.*, 1927, A.C. 686, the permanent employer of a servant brought an action against the temporary employer of the servant for damage to the permanent employer's property by the servant's negligence. The plaintiffs let on hire to the defendants a lighter with a crew of two native lighter boys to be used for loading the defendants' ship in Lagos harbour. The lighter was moored to the ship under the directions of the defendants. One night both native boys left the lighter, which broke away, through a latent defect in one of the mooring ropes. The boys ought to have been on board to supervise the moorings and to obey the orders of the master of the ship, and, had they been there, lines could have been thrown from the ship and fresh hawsers made fast, and the accident averted. As it was the lighter became a total wreck. The Privy Council held that the owners were entitled to succeed in their claim for damages, as the barge passed out of their control to that of the defendants, and the boys became the servants of the defendants, and that the desertion of the lighter at a critical time was negligence on the part of the defendants' servants.

Before, therefore, one can hold a person responsible as master, it must be shown that he had this right to control.

I want now to turn to the consideration of for what acts of the servant the master is in law responsible, because he is the master. His responsibility only extends to cover those acts of a servant which he has impliedly authorised, or as it is sometimes put, for acts in the course of the servant's employment—that is to say, acts such as the servant has implied authority to do on his master's business, as distinct from acts which are done independently for the servant's own purposes. The difficulty lies not so much in the law itself as in the application of the law to the facts of any given case. To take an obvious instance, a master is not liable for an injury caused by his chauffeur in riding his master's horse without authority, for the chauffeur is not employed to ride horses but to drive cars (*McKenzie* v. *M'Leod*, 10 Bing. 385). This is so, even if in fact it was for the master's benefit that the horse should have been ridden by the chauffeur, and that was the chauffeur's object in riding it, nevertheless, the master would not be liable because he was the master, but could only be held liable if he ratified and adopted the chauffeur's act. It may be necessary to examine very carefully what the servant's duties are, in order to see whether an act which appears to be, really is within the authority to be implied from the nature of the servant's duties. For instance, a railway porter is employed to cart and take care of the luggage of passengers, but if a passenger on arrival at his destination decides to remove his luggage later, and leaves it with a porter to look after, the company will not be liable if it is lost or stolen. The porter's implied authority only extends to looking after luggage in the ordinary incidents of a passenger's journey, and in acting as I have suggested, he is exceeding that authority, and is acting as bailee for the passenger on his own account, and not in pursuance of any implied authority from the company. (*Hodgkinson* v. *L.N.W.R.*, 1884, 1 Q.B.D. 228).

In deciding whether an act is, or is not, within the implied authority of a servant, it is immaterial that the act could have been done in a way which would not have caused injury to anyone. If the act, if rightly done, would have been within the servant's implied authority, then the master will be liable if it is improperly or negligently performed, for he is responsible not only for the act itself, but also for the way in which it is done, whether that be the right or the wrong method. But the causing of the injury, be it negligence or anything else, must not only be co-temporaneous with the act which is in the course of the servant's employment, but it must be part of that act as well. In the well-known case of *Williams*

v. *Jones*, 3 H. & C. 602, a carpenter was employed by the defendant to make a signboard and was working in the plaintiff's shed, and after lighting his pipe let the light fall among the shavings and burned the shed down. The defendant was held not liable, as although the act was negligent and co-temporaneous with his work, the Court held, that it was alien to and no part of his employment. The majority of the court thought that although he was undoubtedly negligent whilst using the shed, it was not negligence in using it for the purposes of his master and in the course of his employment. He was only allowed to use the shed to make a signboard, and when he used it for other purposes which were exclusively his own, he became an independent wrong-doer. A somewhat similar set of facts arose in *Jefferson* v. *Derby Farmers Ltd.*, 1921, 2 K.B.D. 281. A boy, in the defendant's employ, was engaged in a garage in filling petrol cans with benzol from a 50-gallon drum. While the spirit was running into a can the boy lit a cigarette and threw the match on the floor, where it ignited some oil and spirit spilled there, the fire spread to the benzol and the garage was burned down. The Court of Appeal held the defendants liable, though it was strenuously argued that the act of lighting the cigarette was not within his duties and reliance was placed on *Williams* v. *Jones*. The court, however, held that it was the boy's duty to use reasonable care while doing work of that nature, and to smoke and throw down the match while doing that work was not to do it with reasonable care, and that it was, therefore, a negligent performance of the work he was employed to do; handling motor spirit is an operation which renders precautions against fire obligatory, it would have been a want of due precaution to have started the work with a stranger near by smoking, still more so to smoke himself; the positive act of smoking was a negation of proper precautions being taken, which it was the boy's duty to take, and so the negligence was in the course of his employment, negligent failure to take proper precautions. In *Williams* v. *Jones* the negligence was unconnected with the carpenter's work—there was no duty to take precautions arising from the nature of his work—the carpentering; it was only when he started to smoke, which was his own independent act, that the duty arose.

Even an express prohibition from the master against doing the particular act which causes the injury will not prevent him being liable if the forbidden act is merely a method of executing a task which it is in the course of the servant's duties to perform. Such a prohibition is only relevant evidence when tendered to show that it was not within the scope of the servant's duties to do that particular task in any way at all. Thus, a prohibition to an omnibus conductor against driving, would be relevant to show that it was no part of his duty to drive at all, and the company would not be liable for injuries caused by his negligence if he did drive (*Beard* v. *L.G.O.C.*, 1900, 2 Q.B.D. 530); but if he drove with the connivance of the driver, the company could be made liable for the negligence of the driver, whose duty it is to retain control of the 'bus, in allowing someone else to drive negligently (*Ricketts* v. *Tilling*, 1915, 1 K.B.D. 644). But a prohibition to the driver against racing or obstructing other vehicles is immaterial, and the owner will be none the less liable if it is disregarded, for though a prohibition against specific acts, they are acts which are only a method of doing what the driver is employed to do, namely, to drive the omnibus (*Limpus* v. *L.G.O.C.*, 1 H. & C. 526). The distinction between the two kinds of prohibition is not always easy, as is shown by the case of *Rand* v. *Craig*, 1919, 1 Ch. 1. There the defendant employed a number of carters daily to cart rubbish from some works to a tipping ground, paying them a fixed sum per trip. It was brought to his notice that some of his carters, instead of taking their loads to the tipping ground, had shot them on some unfenced land belonging to the plaintiff, which was nearer to the works than the tipping ground was, hence the carters would get in an extra journey in the course of the day and so draw higher wages. The defendant thereupon strictly forbade them to tip on to the plaintiff's land. It was urged for the plaintiff in the subsequent action that this prohibition was immaterial, that the carters being employed to cart and tip rubbish the defendant must answer for the trespass committed by them in the course of their employment. Mr. Justice Neville negatived this suggestion and held that the carters were employed to do a particular act, to cart rubbish from the works to the tipping ground; that tipping on to the plaintiff's land was an act entirely for their own benefit, without any regard for, or intention to carry out, their employer's business, their object being to take their loads to the nearest place and there get rid of them; they were not carrying out their duties at all, but doing something entirely different for their own purposes, and therefore their employer was not liable. This judgment was unanimously upheld in the Court of Appeal.

Mere use by a servant of his master's property will not of itself make the master liable for a wrongful act of the servant whilst so doing. If a master lends his property to his servant he is not liable for an injury caused by the servant whilst using it, because he has not the right to control the servants' actions while he is using it, and he cannot be held to have impliedly authorised the servant's actions as part of the servant's duties, the servant is merely a bailee of the property, just as any friend to whom I lend my car.

In the same way the master is not liable for the acts of his servant in unauthorised use of the master's property for the servant's own purposes. But difficult questions arise when the unauthorised use for the servant's purposes and a proper use for the master's purposes of the master's property, are to a certain extent combined together. It is then a question of degree, which must depend on the facts of the case, whether the unauthorised use is such that the servant has ceased to be engaged on his master's business and must be considered to be engaged entirely on his own. The reports contain numerous decisions on such cases, mostly accident cases caused by negligent driving of servants when deviating from their proper journey for their own ends. A slight deviation from the proper route is not enough to exonerate the master; the test is whether the deviation is of such an extent or the unauthorised use is such that the servant can properly be said no longer to be doing what he is employed to do, but to be engaged on a separate task for his own purposes, and unless that is so the employer will not be liable (*Storey* v. *Ashton*, L.R. 4 Q.B.D. 476). On the same principle, if the original use of the master's property is unauthorised, the fact that the servant whilst so engaged incidentally uses it for his master's purposes will not make the master liable (*Rayner* v. *Mitchell*, 1877, 2 C.P.D. 357).

If the servant's employment is such that he has to exercise his discretion as to how he is to act, and in the exercise of his discretion he does the act complained of, the employer will be liable if, had the facts been as the servant supposed them to be, his act was such that an authority to do it could be properly implied. Thus where a railway company had power by statute to arrest passengers travelling without paying their fare, and the superintendent, on the question being referred to him, ordered the plaintiff to be taken into custody on that charge (whereas in fact the plaintiff had paid his fare), the company was held liable in an action for false imprisonment (*Goff* v. *G.N.R.*, 1861, 3 E. & E. 672). On the other hand, where the L.S.W.R. had similar powers, but not to arrest a person for not paying their charges for the conveyance of a horse, and the station-master gave the plaintiff into custody thinking he had improperly not paid the charges for a horse (which was not the fact) a verdict for damages for false imprisonment obtained by the plaintiff was set aside, because, even had the facts been as the station-master supposed them to be, the act was not within the scope of his duties, as it could not be properly implied that the Company had authorised him to do an act which the company had no power to do as being *ultra vires* (*Poulton* v. *L.S.W.R.*, 1867, L.R. 2 Q.B.D. 534.)

The principle of this last case only applies where the company itself has no power by its servants lawfully to do the act for which it is sought to make the company liable. If a company has powers given to it by statute, or under its bye-laws, to pursue certain remedies, and the grant of these powers does not expressly, or by necessary implication, exclude powers which the company would have at common law, the company may be held liable for the act of its servant in pursuing the common law remedy instead of the one given by statute. So if a conductor on the L.C.C. tramways mistakenly believing an unknown passenger to be travelling without paying, instead of arresting him, which the company has power to do, exercises the common law right of ejecting a trespasser, and causes injury by the use of excessive force, the L.C.C. may be held responsible (*Whittaker* v. *L.C.C.*, 1915, 2 K.B.D. 676).

(*To be continued*).

Societies.

Solicitors' Benevolent Association.

ANNUAL MEETING.

The seventieth annual meeting of the Solicitors Benevolent Association took place at the Town Hall, Eastbourne, on Thursday, the 4th inst., Mr. C. E. Barry (Bristol) taking the chair.

The report stated that the membership of the Association now numbered 5,656, of whom 1,198 were life members and 4,458 annual subscribers; 141 of the life members were also annual subscribers, and 105 firms were annual subscribers. The Association had lost during the year 136 subscribers

through death and ninety-nine through withdrawals; 480 new subscribers had been obtained, making a net gain of 245. As compared with the previous uear the total sum received from life membership subscriptions and annual subscriptions showed an increase. This was doubtless encouraging, but it was obvious from the fact that, out of some 15,143 solicitors on the roll, only 36 per cent. were members, that the Association was not receiving from the profession, as a whole, the support which it had a right to expect. The issue of the annual book to the profession last year produced nineteen life and ninety-seven annual members and £106 17s. in donations, a total of £417 3s., which, if added to the amount obtained during his year as chairman, by Sir W. Bull, Bart., of nine life and 360 annual members, and donations of £451 6s. 6d., made the magnificent total of £1,362 9s. 6d. This had been followed up by a circular from the present chairman (Mr. Charles Edward Barry) and produced a further eleven life and 169 annual members, and a handsome list of donations obtained from Bristol solicitors to commemorate his year as chairman, of £353 4s. 6d.; total, £662 9s., the new members representing a considerable increase of annual income. During the year the Association had received a magnificent gift of £1,000 from Sir Cecil A. Coward, to start a fund to pay the education fees of children of members of the profession, both living and dead, to which fund contributions of £100 had been made by Sir Arthur Peake and Sir Reginald Poole, and since the end of the financial year £100 from Messrs. Slaughter and May. The directors had already been able to help in the education of children of applicants out of this fund. The following legacies had been received during the year—£500 under the will of W. B. Hextall; £250 under the will of W. G. Wilde; £200 under the will of Sir George Lewis, Bart.; £150 under the will of A. Pointon; £100 under the will of Miss F. S. Longman; and £50 under the will of Geo. Griffiths. For their personal efforts in obtaining new subscribers the directors thanked, amongst others, the following gentlemen:—Mr. Charles E. Barry, of Bristol; Mr. P. J. Skelton, of Manchester; Mr. C. S. Bigg, of Leicester; Mr. F.L. Steward, of Wolverhampton; Mr. W. E. Mortimer and Mr. G. B. Burke, of London. The total relief granted during the year amounted to £12,843 18s. 1d., of which £5,301 11s. 4d. was allotted to members and families of members, and £7,542 6s. 9d. to non-members and families of non-members. This was an increase of £1,114 10s. 4d. over the previous year. Preference was always given to cases of those who have been subscribers and their dependants. The number of cases relieved was 297, the average grant being about £43. Of these grants 256 were made from the general fund, the remainder from sixteen special funds founded by generous supporters and friends in the past. As in many cases the help given by the Association was the recipients' only means of support, the funds at the disposal of the directors were manifestly quite inadequate.

Gray's Inn.

At Gray's Inn the Lord Justice Holker (Bacon) Scholarship of 1928 (£100 a year for three years) has been awarded to Mr. Eric Harold Hanson, of New College, Oxford. The Lord Justice Holker (Holt) Scholarship (£80 a year for three years) has been awarded to Mr. John Waddingham Brunyate, B.A., of Trinity College, Cambridge.

Gray's Inn Chapel will be reopened for divine service after the Long Vacation on Sunday next, the 14th inst.

Law Association.

The usual monthly meeting of directors was held at The Law Society's Hall on Thursday, the 4th inst., Mr. William Winterbotham in the chair. The other directors present were Mr. J. D. Arthur, Mr. E. B. V. Christian, Mr. P. E. Marshall, Mr. A. E. Pridham, Mr. John Venning, and the secretary, Mr. E. E. Barron. A sum of £100 was voted in relief of deserving applicants, all of whom were over seventy years of age, and other general business was transacted.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, the 9th inst. (Chairman, Mr. W. M. Pleadwell), the subject for debate was: "That this house deplores the decision of the House of Lords in the case of *Great Western Railway* v. *Owners of ss. Mostyn*, 1928, A.C. 57." Mr. E. G. M. Fletcher opened in the affirmative, seconded by Mr. C. B. Head; whilst Mr. H. M. Pratt opened in the negative, supported by Mr. E. E. Pugh. The following members also spoke: Messrs. C. F. S. Spurrell, E. F. Iwi, G. E. Walker, G. Roberts, S. Bates, and Miss C. M. Young. The opener having replied, and the chairman having summed up, the motion was put to the meeting and lost by three votes. There were nineteen members and three visitors present.

Legal Notes and News.

Honours and Appointments.

The King has approved the recommendation of the Home Secretary that Mr. WALTER HEDLEY, K.C., shall be appointed Recorder of Middlesbrough, in succession to Mr. E. A. Mitchell-Innes, K.C., recently appointed Recorder of Leeds. Mr. Hedley was educated at Uppingham and King's College, Cambridge, and was called by Lincoln's Inn in 1907, joining the North-Eastern Circuit. He was appointed Recorder of Richmond (Yorks) in 1920, and took silk in the early part of this year.

[CORRECTED ANNOUNCEMENT.]

Mr. HERBERT DAVEY, M.B.E., barrister-at-law (Recorder of Wenlock), has been appointed Recorder of Dudley in succession to the late Mr. J. B. Matthews, K.C. We regret that in our issue of the 6th inst. we inadvertently stated that Mr. Davey had been appointed "Recorder of Burnley in succession to Mr. A. R. Kennedy, K.C.," an appointment which, of course, Mr. Kennedy still holds.

RATING RELIEF UNDER THE RATING AND VALUATION (APPORTIONMENT) ACT, 1928.

With further reference to the steps which it is necessary to be taken by manufacturers and other persons occupying industrial premises, particulars of which we gave in our issue of the 22nd September (72 SOL. J., p. 631), we would remind our readers that all claims for inclusion of properties in the lists to be prepared under the above Act, with a view to rate relief, *must be submitted to the rating authorities before Tuesday, the 16th October*, and that the same date applies to freight transport premises, except those occupied by railway companies, canal companies and statutory dock authorities. Applications for forms of claim should be made to the local rating authority.

SOLICITORS' CLERK CHARGED.

Richard Mason (37), of no fixed address, was charged at Romford Police Court on Saturday with embezzling £585 belonging to his employers, Messrs. Hunt & Hunt, solicitors. Detective-inspector Crockford said that Mason was employed as a conveyancing clerk and gave satisfaction. The principal of the firm was away for some time through illness, and on his return Mason left. On going through his books Mr. Hunt found that certain sums had been paid to Mason, and this money, or part of it, had been paid into his (Mason's) banking account. Prisoner was remanded.

WHEN ALMS MAY BE TAKEN.

When Thomas Tuddenham, fifty-eight, a railway clerk, of Parker Street House, Drury-lane, pleaded not guilty at Marlborough-street on Wednesday, to placing himself for alms-gathering purposes in High-street, Bloomsbury, a constable stated that on some occasions the prisoner accepted money without giving boxes of matches in exchange.

Mr. Hay Halkett (the magistrate): Supposing he is there with matches for sale, and a person looks at the man and thinks he is thin or pale or anything of that sort, and, not wanting matches, gives him a penny. If the man does not make any sign and does nothing to encourage people, that is not placing himself.

The Constable: I did not see him do anything to encourage people.

Tuddenham was discharged.

A WIDOW'S "SUTTEE."

The Sessions Judge at Allahabad has acquitted the twelve Sonars (low caste Hindus) who were charged with abetting the commission of "suttee" by the widow of one Durga Sonar, of Awan, in the Hardoi district of the United Provinces.

Durga Sonar died in December last, and the time of year was not considered to be auspicious for cremation. The body of the Sonar was accordingly buried, and was subsequently disinterred and cremated at a more auspicious time. When the preparations for the cremation were proceeding the widow stated that it was her intention to commit "suttee." Her relatives and friends tried in vain to dissuade her from the act, but finally allowed her to have her own way.

After the performing of various rites, the widow sat upon the funeral pyre and was burnt to death.

Twelve of the accused persons were members of the funeral party, but the Sessions Judge was not able to find that they instigated or abetted suicide, and gave them the benefit of the doubt.

ROYAL COMMISSION ON POLICE POWERS.

The Royal Commission on Police Powers and Procedure held its first public session on Wednesday, the 10th inst., at Caxton House, Tothill-street, Westminster. Lord Lee of Fareham (Chairman) presided, and there was a full attendance of the members of the Commission. The other members are Lord Ebbisham, Sir Howard Frank, Dame Meriel Talbot, Sir Reginald W. E. L. Poole, Mr. J. T. Brownlie, Miss Margaret Beavan (Lord Mayor of Liverpool) and Mr. Frank Pick.

The Commission's terms of reference are :—

To consider the general powers and duties of police in England and Wales in the investigation of crimes and offences including the functions of the Director of Public Prosecutions and the police respectively; to inquire into the practice followed in interrogating, or taking statements from, persons interviewed in the course of the investigation of crime; and to report whether in their opinion such powers and duties are properly exercised and discharged, with due regard to the rights and liberties of the subject, the interests of justice, and the observance of the Judges' Rules, both in the letter and the spirit; and to make any recommendations necessary in respect of such powers and duties and their proper exercise and discharge.

The proceedings began with the reading of the Royal Warrant which explains in ancient form the status of the Commission as a tribunal.

After the chairman had made an opening statement explaining the functions of the Commission and the procedure that would be followed, Sir Ernley Blackwell, Assistant Under-Secretary and head of the Legal Department of the Home Office, was examined on a statement of evidence which had been submitted in the form of answers to a preliminary questionnaire addressed to the Home Secretary The next public session of the Commission will be held on Monday, the 15th inst.

DO LAWYERS ENCOURAGE CLIENTS TO LITIGATION ?

Keep out of the law courts is, contrary to the belief held by some, the advice of most lawyers themselves.

Writing in reply to a recent article in a morning paper by Candidus, "Solicitor" says :—

"The law will be simplified only when people become more perfect.

"A small minority of lawyers encourage clients to litigation. The Law Society are always seeking means to check their operations and to keep such men out of the profession; but the society's powers are limited, as about two-thirds only of the profession are members.

"When I became a partner in my firm, the senior partner strongly impressed upon me the duty of keeping my clients out of the courts.

"All reputable firms follow that principle, and have long done so, as the enclosed copy letter, written by my great-grandfather in this office, proves."

The letter, which is dated 3rd November, 1846, points out that although a sacrifice of about £5 might be involved by acceding to certain terms, "that amount and much more would be expended by you even in a successful trial. . . . In a pecuniary point a man had better be cheated and laughed at than go to law."

LEGAL LADIES GOLF ASSOCIATION.

The Legal Ladies' G.A. held their autumn meeting at Sandy Lodge on Monday last, when Miss Dorothy Pearson (the runner up in the Ladies' Golf Championship) was among the competitors. She returned eighty-five with two others, only one stroke behind the winner of the scratch prize, Miss Slade, who had a score of eighty-four.

The results were :—

SCRATCH : Miss Slade, 84 ; Mrs. Erlebach, 85 ; Miss D. Pearson, 85 ; Mrs. Culross, 85.

HANDICAP (1-15) : Mrs. Church Bliss, 88—15=73 ; Miss Louder, 88—12 = 76. The latter won second prize after a tie with Mrs. Abady and Mrs. R. Dawson.

HANDICAP (15-30) : Mrs. Beecroft, 89—18 = 71 ; Mrs. Elliott, 93—21 = 72.

BEST NINE HOLES : Mrs. Gunby Hadath, 34½.

SEALED CONDITIONS : Mrs. Culross.

ELEVEN HOLES BOGEY : Mrs. Canny, 3 up ; Mrs. Erlebach 2 up. The latter won second prize after a tie with Mrs. Sinclair.

Court Papers.

Supreme Court of Judicature.

MICHAELMAS SITTINGS, 1928.

COURT OF APPEAL.

IN APPEAL COURT NO. I.

Friday, 12th October.—Exparte Applications.

Monday, 15th October.—Exparte Applications, Original Motions, and Interlocutory Appeals from the Chancery and Probate and Divorce Divisions, and if necessary, Chancery Final Appeals.

IN APPEAL COURT NO. II.

Friday, 12th October.—Exparte Applications.

Monday, 15th October.—Exparte Applications, Original Motions, and Interlocutory Appeals and, if necessary, Final Appeals from the King's Bench Division.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

GROUP I.

In Causes and Matters assigned to Mr. Justice EVE, Mr. Justice ROMER and Mr. Justice MAUGHAM.

Mr. Justice EVE.

THE WITNESS LIST—PART I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.

Mondays .. Companies (Winding up) Business.

Tuesdays, Wednesdays, Thursdays, Fridays } The Witness List. Part I.

Mr. Justice ROMER.

THE WITNESS LIST.—PART II.

Mr. Justice ROMER will sit daily for the disposal of the List of longer Witness Actions.

Mr. Justice MAUGHAM.

THE NON-WITNESS LIST.

Mondays .. Chamber Summonses.
Tuesdays .. Mots, Short Causes, Pets., Procedure Summonses and Adjourned Summonses.
Wednesdays Fur. Cons and Adjourned Summonses.
Thursdays Adjourned Summonses.
Lancashire Business will be taken on Thursdays, 25th October, 8th and 22nd November and 6th and 20th December.
Fridays .. Mots. and Adjourned Summonses.

GROUP II.

In Causes and Matters assigned to Mr. Justice ASTBURY, Mr. Justice TOMLIN and Mr. Justice CLAUSON.

Mr. Justice ASTBURY.

THE WITNESS LIST.—PART I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.

Except when otherwise announced in the Daily Cause List.

Mondays, Tuesdays, Wednesdays, Thursdays, Fridays } The Witness List. Part I.

Bankruptcy Judgment Summonses will be taken on Mondays the 29th October, 26th November and 10th December.

Bankruptcy Motions will be taken on Mondays, the 22nd October, 12th November and 3rd December.

A Divisional Court in Bankruptcy will sit on Tuesdays the 6th November and 18th December.

Mr. Justice TOMLIN.

THE WITNESS LIST.—PART II.

Except when otherwise announced in the Daily Cause List.

Mondays .. Sitting as Chairman of The Royal Commission on Awards to Inventors or of The University of London Commissioners.

Tuesdays, Wednesdays, Thursdays, Fridays } The Witness List. Part II.

Mr. Justice CLAUSON.

THE NON-WITNESS LIST.

Mondays .. Chamber Summonses.
Tuesdays .. Mots., Short Causes, Pets Procedure Summonses, Fur. Cons., and Adjourned Summonses.
Wednesdays Adjourned Summonses.
Thursdays Adjourned Summonses.
Fridays .. Mots. and Adjourned Summonses.

N.B.—The last Motion day this Sittings in this Court will be Thursday, December 20th.

THE COURT OF APPEAL.

MICHAELMAS SITTINGS.

FROM THE CHANCERY DIVISION.

(Final List.)

Hinde v Hinde
Companies (Winding Up) Re Companies (C) Act, 1908 Re Windsor Steam Co (1901) ld
Re Rittner Public Trustee v Bulmer
Re Villar Public Trustee v Villar
Re Meacock Sayer v Meacock
Re Whitting Williamson v Whitting
Re Meyer Marsden v Meyer
John Wright & Eagle Range ld v General Gas Appliances ld
Re Pennington Fraser v Pennington
Hoskyns-Abrahall v Paignton U D C
Re Trade Marks Acts, 1905 & 1919 Re Liverpool Electric Cable Co ld Re an Application No. 488253
Re Trade Marks Acts, 1905 & 1919 Re Liverpool Electric Cable Co ld Re An Application No. B. 476022
Bournemouth-Swanage Motor Road & Ferry Co v Harvey & Sons
Vane v Famous Players Film Co ld
Companies (Winding Up) Re Wilts & Somerset Farmers ld and Re Companies (C) Act, 1908
Companies (Winding Up) Re Same and Re Same
Chaney v Maclow
Re Parsons Parsons v Trowell
Busby v Wallace
Bridger v Booth
Re Lewis Merthyr Consolidated Collieries ld Lloyds Bank ld v The Company
Re Same Same v Same
Verner-Jeffreys v Pinto
Ellesmere & ors v Wallace
First Russian Insurance Co, established 1827 (in liquidation) v The London & Lancashire Insurance Co ld
Same v Same
Barnett v The London Co-operative Society ld
Att-Gen v Cottrell
Re Sherborne Settled Estates Re Settled Land Act, 1925
Re Companies (Winding Up) Re Companies (C) Act, 1908 Re F E Stanton ld

Beard v Jonesco
Beckett v Beckett
Philippi v Administrator of German Property
Henton v Webster

(In Bankruptcy.)

Re a Debtor (No. 483 of 1928) Expte The Debtor v The Petitioning Creditor & The Official Receiver
In the Matter of a Bankruptcy Notice (No. 1186 of 1928) Expte The Debtor v The Judgment Creditor

FROM THE PROBATE AND DIVORCE DIVISION.

(Final List.)

Sherwood, E v Sherwood, W M F
Lysaght, I Q v Lysaght, J L
Statham, J T v Statham, J C

FROM THE CHANCERY AND PROBATE AND DIVORCE DIVISIONS.

(Interlocutory List.)

F Reddaway & Co ld v Hartley
Quarterly Dividends ld v Beard

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

Foreman & Ellams ld v Federal Steam Navigation Co ld s.o. pending a decision in House of Lords
Re an Arbitration between Symington & Co & The Union Insurance Society of Canton ld pt hd (s.o.—remitted to Arbitrator to answer questions
G Scammell & Nephew ld v Hurley
Foster v Driscoll
Lindsay v Attfield
Lindsay v Driscoll
Gronow v Waterlow
Oliver v Clayton & ors
Same v Same
Lind v Mitchell
Portch v Barovitch
Rozanes v Bowen
Waring v Paige Detroit Motor Car Co
Atkinson v Pirie
James Finlay & Co ld v N V Kwik Hoo Tong Handel Maatschappij
Capel-Smith v Dyer
Oliver v O'Mara
George B Leach & Sons ld v John G Pugh & Co
Bell v Lee
The King, on the prosecution of William Slade v The Confirming Committee for the County of Southampton
Same v Same
Towler v Gaunt
Rex (Expte Locke Lancaster & W W & R Johnson and Sons ld) v The Metropolitan Borough Council of Poplar
Same v Same
Farnsworth v Lord Mayor, &c of City of Manchester
Callan v Excelsior Wire Rope Co ld
Re Agricultural Holdings Act 1923 Eggleton v Governors of Wycombe Royal Grammar School
Winham v Banham
Hicks v Snook
Anderson v E Blackburn & Sons
Dudkin v Caffyns ld
Re Agricultural Holdings Act 1923 Williams v Bennett
Turner, Nott & Co ld v Bristol Corporation
Jones v Dey

FROM THE KING'S BENCH DIVISION.

(Revenue Paper.)
(Interlocutory List.)

Att-Gen v Timber Operators & Contractors ld

(Revenue Paper.)
(Final List.)
1928.

Mills v Jones (Inspector of Taxes)
Att-Gen v Luncheon & Sports Club ld
Att-Gen v J J Lane ld
Kneeshaw (Inspector of Taxes) v Clay & Horsfall
Morley (Inspector of Taxes) v Lawford & Co
Shanks v Commrs of Inland Revenue
The Geologists' Association v Same
The Midland Counties Institution of Engineers v Same
Miller (Inspector of Taxes) v Ellery & Co ld
Collyer (Inspector of Taxes) v Hoare & Co ld
Brandwood v Banker (Inspector of Taxes)
Same v Commrs of Inland Revenue
Duff-Dunbar v Commrs of Inland Revenue
Daw, W F B v Same
Daw, C B v Same
Archer-Shee v Baker (Inspector of Taxes)

(Interlocutory List.)

Simmonds Brothers & Sons ld v Marsh
Ferranti ld v Measurement ld
Digby v Kelly
Universal Pictures Corporation v Greenhill
Burton v Board
Dawson v Dawson
Price Brothers & Co ld v Heath

APPEALS.
re The Workmen's Compensation Acts
(From County Courts).

Knight v Skinner
Ransom v Fulham Football and Athletic Co ld
Anderson v Hickman & Co
Plumb v The Raleigh Cycle Co ld
Taylor v Owners of the Ship "La Paz"
Brotherton v J & A Jackson ld
Lee v Munro
Gladstone Spinning Co ld
Powell v Gwaunclawd Abererane Colliery Co ld
Hill v Davies
Colquitt v United Steel Co ld
Evans v Owners of s.s. "Molton"
Partridge, Jones & John Paton ld v Sulway
Standing in the "Abated" List.

FROM THE CHANCERY DIVISION.

(Final List.)

Re Wombwell Brodrick v Hohler s.o. generally

FROM THE KING'S BENCH DIVISION.

(Interlocutory List.)

Pusey v H Boot & Sons ld (s.o. liberty to restore)

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

For the purpose of securing the more speedy disposition of business and especially of the shorter Witness Actions, the Judges of the Chancery Division are divided into two groups of three each, and there are three lists, namely: The Non-Witness List, The Witness List Part I, into which the shorter Witness Actions will go, and the Witness List Part II, into which the longer Witness Actions will go.

GROUP I: Mr. Justice EVE, Mr. Justice ROMER and Mr. Justice MAUGHAM.

GROUP II: Mr. Justice ASTBURY, Mr. Justice TOMLIN and Mr. Justice CLAUSON.

MICHAELMAS SITTINGS, 1928.

GROUP I.

Mr. Justice EVE will take Part I of the Witness List. Companies (Winding up) business will be taken on each Monday.

Mr. Justice ROMER will take Part II of the Witness List.

Mr. Justice MAUGHAM will take the Non-Witness business as set out in the Michaelmas Sittings Paper.

GROUP II.

Mr. Justice ASTBURY will take Part I of the Witness List. Bankruptcy business will be taken as announced in the Michaelmas Sittings Paper.

Mr. Justice TOMLIN will take Part II of the Witness List.

Mr. Justice CLAUSON will take the Non-Witness business as set out in the Michaelmas Sittings Paper.

GROUP I.

Set down to 29th September, 1928.

Before Mr. Justice EVE.

Witness List. Part I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.

Aerograph Co ld v Attwood's Spraying Equipment ld
Walworth Pharmacy v Farquhar
Re Cruesmann Cruesmann v Cruesmann (with witnesses)
Goodbody v Mlinaric
Vair-Turnbull v Sandfield
Perfecta Seamless Conduit Co (1923) ld v Benson
Wilmot v Vale
Buckworth v Paine
Shorr v E Mortimer (London) ld
Webster v Mitchell
Re Trade Mark No. 476178 and re Trade Marks Acts 1905 & 1919
Corrigan v Rayson
Makaule-White v Egleton
Mayhew v Occleshaw
Remington v Norsworthy
De Oliveira v National Provincial Bank ld

Curtis v French
Warwick v Bradnock
Re Terry Sturman v Lunnon
Honnor v Crouch
Coles v White City (Manchester) Greyhound Association ld
Ambler v Baker (s.o. return of Commission)
Harvey v Priest
Re Brame & re Married Woman's Property Act 1882
Brame v Brame
Smeed v Grant
Smythe v Welby
Re Russell Withers v Russell (with witnesses)
Re Trade Marks Acts 1905 & 1919 Re Application of Portland Cement Selling and Distributing Co ld Re Trade Mark No. 480702
Lattey v Gold
Steele v Steele
Roberts v Bath
Walker v Thomas
Stokes v Stokes
Chamberlain v Denny
Parsons v Gibbs
Johnson v Sutton
Doyle v Trustram
Hibbert v Stabler Kesteven
Claude Inketer ld v Smallman
Portland Cement & Limestone Products ld v Singer
Kennedy v Thomassen
Bernstein v Public Trustee
Darly v Fox
Hancock v Stark
Truman Hanbury & Buxton v Heaton
Bristed v Angus
Tipper v Tipper
Bromet v Bateman
Att-Gen v Sunderland Corporation
J B Stone & Co ld v Steelcase Manufacturing Co ld
Scott v Prior
Andrews v Riley
Green & Abott ld v Hilton
Hemming v Platt

COMPANIES (WINDING UP) AND CHANCERY DIVISION.

Companies (Winding up.)

Petitions (to wind up).

Alliance Bank of Simla ld (petn of L W Warlow-Harry—ordered on May 6 1924 to s.o. generally)
Robert Young's Construction Co ld (petn of London Asphalte Co ld—s.o. from Jan 20 1925—liberty to apply to restore)
H A P P Tanning Co ld (petn of J B Maclean and ors—ordered on June 2 1926 to s.o.generally)
Trinidad Land & Finance Co ld (petn of A H Clifford & Anr trading as Clifford & Clifford—ordered on June 15 1926 to s.o. generally)
British Baltic Development Co ld (petn of A Vercoutere—s.o. from June 11 1928 to Dec 17 1928)
Dillwyn Colliery Co ld (petn of E E Bevan—s.o. from July 16 1928 to Oct 15 1928)
Ward Sloane & Co ld (petn of S L Manley—s.o. from July 23 1928 to Oct 15 1928)
Rodney Investment Syndicate ld (petn of M Collins)
Miranda ld (petn of Dorland Advertising ld)
Maurice Stores ld (petn of L & A Froomberg ld)
Besley & Crooke ld (petn of National Employers Mutual General Insurance Association ld)
John Radcliffe ld (petn of Louis Thornton trading as Thornton & Co) (Manchester District Registry)
George E Everitt & Sons ld (petn of W J Southgate)
East African (Jubaland) Cotton Growers Association ld (petn of H M Att-Gen)
St. Ermins Westminster ld (petn of Maple and Co ld)
Clyno Engineering Co (1922) ld (petn of A J Stevens & Co (1914) ld carrying on business as C W Hayward)
Wearwell London ld (petn of Sutton, Bye & Co a firm)
East Ham Palais de Danse ld (petn of East Ham Corporation)
City Oil Company (Brighton) ld (petn of W A Miller)
Anglo Sphinx Engineering Co ld (petn of D Gilson & Co ld & anr)
National Heating Co ld (petn of W S Sharpin)
Simmonds Brothers (1925) ld (petn of Joseph Yates ld)
Lejon ld (petn of M Lazar & Co ld)
W W Taylor & Son ld (petn of F D Thomas)
Pollock-Anderson Oil Engines ld (petn of Joseph Webb & Son ld) (Manchester District Registry)
MacIlwaine ld (petn of John E Moss ld)
Hardwood Trading Co ld (petn of H M Att-Gen)
Sheena Bros & Co ld (petn of Lynch Brothers ld & ors)
Douglas Kirby & Co ld (petn of A Franke trading as Alfred Franke & Co)
Keeley Institute of Great Britain (Incorporated) (petn of E J Edward practising as Edward & Childs)
London Gowns & Allied Trades Association ld (petn of A Shaljean ld)
Edwards Dental Manufacturing Co ld (petn of Amalgamated Dental Co ld)
J Benson ld (petn of David Bishop)
Blue Coaches & Motor Transport Services ld (petn of Michelin Tyre Co ld)

Chancery Petitions.

Elmore's Metal Co ld & reduced (to confirm reduction of capital—ordered on July 9 1928 to s.o. generally)
Hull Oil Manufacturing Co ld & reduced (to confirm reduction of capital)
Paul Ruinart (England) ld & reduced (same)
Tanganyika Development Co ld & reduced (same)
Wilcox Jozeau & Co (Foreign Chemists) ld and reduced (same)
Gann & Brown ld & reduced (same)
Merrall & Son ld & reduced (same)
San Jacinto Land Co ld & reduced (same)
Tylors (Water & Sanitary) ld & reduced (same)
Robert Fell & Sons ld & reduced (same)
Tarmac (Kidsgrove) ld & reduced (same)
Western Mail ld & reduced (same)

To be continued.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 25th October, 1928.

	Middle Price 10th Oct.	Interest Yield.			Yield with Redemption.		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	86¾	4	12	0	—		
Consols 2½%	55½	4	10	0	—		
War Loan 5% 1929-47	103⅛	4	16	6	4	17	6
War Loan 4½% 1925-45	99	4	11	0	4	14	0
War Loan 4% (Tax free) 1929-42	100⅛	4	0	0	3	19	6
Funding 4% Loan 1960-1990	88¼	4	11	0	4	11	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94	4	5	6	4	7	6
Conversion 4½% Loan 1940-44	99½	4	11	0	4	13	0
Conversion 3½% Loan 1961	77½	4	10	6	—		
Local Loans 3% Stock 1921 or after	64½	4	13	0	—		
Bank Stock	260	4	12	0	—		
India 4½% 1950-55	94½	4	15	6	4	19	6
India 3½%	71	4	19	0	—		
India 3%	61	4	18	0	—		
Sudan 4½% 1939-73	96	4	14	0	4	15	0
Sudan 4% 1974	87	4	12	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	82	3	13	0	4	8	0
Colonial Securities.							
Canada 3% 1938	87	3	9	0	4	16	0
Cape of Good Hope 4% 1916-36	94	4	5	0	4	19	6
Cape of Good Hope 3½% 1929-49	82	4	5	6	4	18	6
Commonwealth of Australia 5% 1945-75	99	5	1	0	5	2	0
Gold Coast 4½% 1956	95	4	14	6	4	17	6
Jamaica 4½% 1941-71	94	4	16	0	4	17	6
Natal 4% 1937	93	4	6	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	100	5	0	0	5	3	0
New Zealand 4½% 1945	97	4	14	0	4	17	6
New Zealand 5% 1946	105	4	15	6	4	14	0
Queensland 5% 1940-60	98	5	2	0	5	0	6
South Africa 5% 1945-75	104	4	16	0	4	16	0
South Australia 5% 1945-75	99	5	1	0	5	2	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	98	5	2	0	5	2	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	65	4	13	0	—		
Birmingham 5% 1946–56	103	4	17	0	4	15	0
Cardiff 5% 1945–65	102	4	18	0	4	16	6
Croydon 3% 1940–60	71	4	5	0	4	16	0
Hull 3½% 1925–55	77	4	10	0	5	0	0
Liverpool 3½% Redeemable at option of Corporation	75	4	13	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4	12	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64	4	13	6	—		
Manchester 3% on or after 1941	65	4	12	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	65	4	12	0	4	12	6
Metropolitan Water Board 3% 'B' 1934–2003	66	4	11	0	4	12	6
Middlesex C. C. 3½% 1927–47	84	4	3	6	4	17	0
Newcastle 3½% Irredeemable	74	4	14	6	—		
Nottingham 3% Irredeemable	64	4	12	6	—		
Stockton 5% 1946–66	102	4	19	0	4	19	0
Wolverhampton 5% 1946–56	102	4	18	0	4	19	9
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	81¼	4	18	0	—		
Gt. Western Rly. 5% Rent Charge	99	5	1	0	—		
Gt. Western Rly. 5% Preference	93	5	8	0	—		
L. & N. E. Rly. 4% Debenture	76	5	5	0	—		
L. & N. E. Rly. 4% Guaranteed	72	5	11	0	—		
L. & N. E. Rly 4% 1st Preference	63½	6	6	0	—		
L. Mid. & Scot. Rly. 4% Debenture	79½	5	0	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	78	5	2	6	—		
L. Mid. & Scot. Rly. 4% Preference	71½	5	12	0	—		
Southern Railway 4% Debenture	79½	5	0	6	—		
Southern Railway 5% Guaranteed	97	5	3	0	—		
Southern Railway 5% Preference	90	5	11	0	—